

**Affective Politics, Effective Borders: News Media Events and  
the Governmental Formation of Canadian Immigration Policy**

**Tamara Vukov**

A Thesis

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the Department of

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## ABSTRACT

Affective Politics, Effective Borders: News Media Events and  
the Governmental Formation of Canadian Immigration Policy

Tamara Vukov, PhD  
Concordia University, 2007

In the wake of the widespread media focus on the securitization of Canadian immigration policy and its harmonization in a North American “smart border” regime, this thesis examines the role that large-scale news media events around immigration and refugee asylum play in the formation of Canadian immigration policy. Two crucial news events in particular, the 1999 landings of Fujian Chinese migrants off the coast of British Columbia, and the focus on the ostensibly porous Canadian border following the September 2001 attacks in the United States, are analyzed in terms of their impacts on the introduction and intensification of trafficking and security policies, as well as selection, interdiction and enforcement (deportation/detention) practices. This project draws on and reworks theories of biopolitics and governmentality, along with the emerging literature on affect in cultural studies, to consider the effects that spectacular news events around migration have on the governmental formation of immigration policies. Methodologically, it draws on elements of interpretive and discourse analysis, qualitative interviews, along with an approach developed to account for the affective dimensions of news events in everyday life. The thesis argues that these highly affective news media events have been crucial to the formation of an increasingly racialized and sexualized biopolitics of migration focused on the preventative targeting of “risky” migrant bodies and their precarious movements and labour, as crystallized in the recent *Immigration and Refugee Protection Act* (2002) and the *Safe Third Country Agreement* (2004).

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Two years after I began the research that led to this thesis, an important network of community and activist groups emerged in Montréal that has fought the impacts of the recent shifts in immigration policy on racialized migrants. I deal with their contributions at several points in the coming pages, but I want to acknowledge them here. The collective action and intellect of this network of non-status individuals, groups, and allies has been a vital source of learning and inspiration for this work.

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## LIST OF ACRONYMS

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9/11 September 11, 2001

ATS Automated Targeting System

CASSA Comité d'action des sans-statut algériens

CBSA Canada Border Services Agency

CCR Canadian Council for Refugees

CIC Citizenship and Immigration Canada

CRDD Convention Refugee Determination Division

CSIS Canadian Security and Intelligence Service

DAARE Direct Action Against Refugee Exploitation

DFAIT Department of Foreign Affairs and International Trade

H&C Humanitarian and compassionate claim

IRB Immigrant and Refugee Board

IRPA Immigration and Refugee Protection Act

MIO Migration integrity officer

NGO Non-governmental organization

NSEERS The National Security Entry-Exit Registration System

PIF Personal Information Form

POE Port of entry

PR Permanent residency/resident

PRRA Pre-Removal Risk Assessment

PSEPC Public Safety and Emergency Preparedness Canada

RAD Refugee Appeal Division

RCMP Royal Canadian Mounted Police

RCO Refugee Claims Officer

RPD Refugee Protection Division (of the IRB)

RPO Refugee protection officer

SIRC Security Intelligence Review Committee

STCA Safe Third Country Agreement

UNHCR United Nations High Commissioner for Refugees

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## INTRODUCTION

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### **1 *there is something about people on ships that drives the public crazy***

On April 10, 2007, an event unfolded in the Canadian news media that, initially at least, seemed to carry a familiar sense of foreboding and inevitability, like a story we've been told so many times that all of the twists and turns, along with the ending, are foregone. A container ship, the Cypriot-registered *Cala Puebla*, was headed to Canadian shores en route from Portugal with stops in Spain and Italy, reportedly carrying anywhere from 150 to 250 stowaways said to be hidden in containers on the vessel.

Throughout the day, the story of the "mystery ship"<sup>1</sup> was reported with a mounting sense of anticipation for its reported time of arrival at 1 p.m....the movements of the ship as it approached its destination at the Halifax port carefully tracked from moment to moment, the media building up an escalating sense of momentum with each update. "The stowaways will have likely been enclosed in a small space for many days, with little or no food or water... 'Some might even be dead'," pronounced reported "expert in human smuggling and trafficking" Benjamin Perrin to *CBC News*.<sup>2</sup> Public Safety and Emergency Preparedness Minister Stockwell Day soon arrived at the scene of the encroaching vessel's landing, with some of the news media reporting rumors that he

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<sup>1</sup> Alison Auld. "Mystery shrouds possible stowaway ship being searched in Halifax port." *Canadian Press*. April 11, 2007.

<sup>2</sup> *CBC.CA*. "No stowaways found on ship, sailor says: Mystery surrounds container ship from Portugal." April 10, 2007. <http://www.cbc.ca/canada/nova-scotia/story/2007/04/10/cala-puebla.html> (accessed April 2007).

was preparing to board the ship. When the *Cala Puebla* finally docked, several media outlets boarded the cargo vessel with agents of the Canadian Border Services Agency, who were also backed up by operational support from the Halifax police and the RCMP, six police boats, two Sea King helicopters courtesy of the Canadian Navy, and a small plane. All, particularly the media, were on alert for the coming drama about to break loose once the search of the ship was completed.

The only trouble was that no stowaways were found aboard the ship. The painstaking ten hour search of hundreds of containers on the ship, with 15 border officers breaking the individual locks of each container and the entire crew detained, turned up nothing. One of the crew members told the media that the crew had thought the search was a joke, because of the difficulty of hiding 250 people on such a small ship. Stockwell Day was philosophical. At a news conference the next day, he noted that the “rigorous search was a ‘positive exercise in port security’”:

What you witnessed was a full operational search...where all the containers on a ship were offloaded and were searched...all of those containers destined for Canada...We can't, for security reasons, give out how all risk assessments are done... If this level of security had not been applied, and stowaways had been on board and they had walked away, then the type of question you would be asking would be on the reverse of that.<sup>3</sup>

Day would not discuss the cost of the operation with the media, several of whom noted that the exercise demonstrated how port security had been bolstered after the September 11<sup>th</sup>, 2001 attacks in the United States. At the end of the day, the news event around the “mystery ship” called the *Cala Puebla* was, in the informal parlance of journalists, a “fizzle.”

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<sup>3</sup> *CBC.CA*. “No stowaways on board ship, Day confirms.” April 11, 2007. <http://www.cbc.ca/canada/nova-scotia/story/2007/04/11/cargoship-hfx.html> (accessed April 2007).

Day's response, couched as it was in the language of risk assessment and the need to act on potential threats from shadowy outsiders, as well as the accompanying public spectacle of governmental over-responsiveness to reported threats and dangers, have become all too familiar hallmarks of post-9/11 security culture. Yet this news event that turned out to be a non-event is also inscribed in a longer historical trajectory of migrant boat landings and frenzied media events around the infiltration or arrival of "dangerous foreigners" to Canada (Avery 1979). Canada has been haunted by many ghost ships and phantom migrants in its history as a settler colonial nation. The list of ships transporting migrants that have provoked a national furor and/or been turned away are many: from the Komagata Maru transporting South Asian migrants in 1914, to the S.S. St. Louis carrying Jewish refugees from Nazi-occupied Europe in 1939, from the 1987 landings of Sikh refugees on the Amelie (who were allowed to land after much controversy), to the arrival of four cargo ships carrying almost 600 Fujianese Chinese migrants in 1999. The arrival of these ships was often met by a militarized response, though the recent scale of that militarization has reached an unprecedented level. Also unprecedented is the extent of the contemporary media's mobilization around these events, as well as the degree of media and governmental collusion in the resulting response. Indeed, this thesis investigates the role of such news media events, not only as mediums of influence on governmental policies, but as key nodal points in the governmentality of Canadian migration.

In the opening sequence of Ali Kazimi's documentary *Continuous Journey* (2004), which I will consider further in Chapter 4, immigration law professor Audrey Macklin makes the following observation regarding the notorious Komogata Maru incident of

1914, an event that was critical in setting the course of racialized exclusions in Canadian immigration policy for the next 50 years:

There is something about people on ships that drives the public crazy. And you can track the history of Canadian immigration policy along a path of: boats come into Canada, moral panic ensues, restrictive legislation is passed. And I think the Komogata Maru is of a piece with that larger phenomenon...

This thesis focuses on two events in particular that played out over 85 years after the attempted landing of the Komogata Maru ship in the Vancouver Harbour—also sparking major media events and mass public outrage, also leading to the introduction of new forms of restrictive immigration legislation. The sequence Macklin describes—*migrant landings > public panic > restrictive legislation*—is a nexus that much of this thesis will be preoccupied with investigating, questioning and unraveling, though the events considered do not always involve boats, and the affects circulated involve more than simple panics (as I argue below). In Chapters 2 and 3, the event in question is what came to be known as the “Summer of the Boats” in 1999, once again off the coast British Columbia, with the arrival of four cargo ships carrying 599 migrants from the Fujian province of the People’s Republic of China. It too is of a piece with the larger phenomenon Macklin describes. In turn, Chapters 6 and 7 focus on the news event that was initially centered upon the 9/11 attacks in the United States and soon became focused on Canada’s “porous borders” and the specter of a “Canadian Connection” to the attacks.

I began the formal research process and reflection that led to this thesis in the fall of 2000, at the outset of my doctoral studies at Concordia. This was in the immediate aftermath of the mass deportation of the Fujian Chinese migrants who had arrived the previous summer, and the tabling of Bill C-11 by the Immigration Minister in the spring

of 2000. Bill C-11 was strongly shaped in its language and intended effects by the events surrounding the Summer of the Boats, and was eventually passed into legislation as the new *Immigration and Refugee Protection Act* in 2002—the first Immigration Act to be passed in over thirty years, and the sixth overall in the history of Canada as a nation-state. I had recently completed my master's thesis research on the celebratory media spectacles around immigration that have also been a central part of Canada's promotional image as a “nation of immigrants,” including the opening of the Pier 21 immigration history museum in Halifax during the same summer as the Fujianese boat landings (Vukov 2003b; Vukov 2000). The news media event that unfolded around the boat landings as I completed my master's thesis left me deeply disturbed and, at the same time, rather unsurprised if no less unsettled. I came into my initial doctoral studies wanting to question and challenge the seemingly drastic governmental effects of the news event around the boat landings on the immigration policies introduced in response.

Almost exactly a year to the day after I began my doctoral research, the intervening events of 9/11 crashed into the Canadian mediascape. In addition to my political distress and opposition to what became the perpetual “war on terror” and the many fronts that it encompassed, I knew immediately that I would be faced with a rapidly expanding, if not exploding topic of research. The breathtaking pace of political and policy changes that ensued, along with the ever-shifting, ongoing nature of those changes, has made for a challenging and sometimes disturbing research process, in which my capacity for synthesis and analysis has been tested as never before. In many ways, and despite my reflex against overly empiricist approaches, I needed to give the research time to unfold and find a path through the dizzying array of developments. I also needed to find ways of intervening practically into these questions rather than purely from a stance

as a researcher (see further discussion of this below), as well as to see where the proverbial chips would fall. Once they did, I began to realize that the events of the Summer of the Boats, and those of 9/11 were two mutually informing and crucial episodes in the recently rearticulated governmentality of migration in Canada.

For these reasons, the starting point and main research question for my thesis began with the political effects that the two news events around the Fujianese boat landings and 9/11 had on the governmental formation of recent immigration policies. In the coming pages, the two events are analyzed with respect to their impacts on the introduction of trafficking and security policies, as well as selection and enforcement (deportation) practices. A key objective of the thesis is to explore how these highly affective news events have informed the increasingly racialized and sexualized “smart border” regime that has emerged through the IRPA and the *Safe Third Country Agreement* (2004).

More generally, as my opening vignette suggests, questions of immigration and asylum are charged with an inordinate visibility and an affective intensity in the public culture of liberal/neoliberal democratic states. We are often told by the media that the world is facing a global migration crisis. Why it is that matters of immigration are so often couched in the language of crisis is rarely questioned. While statistics remain a key political battleground and mode of governmentality over questions of immigration (see Chapter 5), it is worth noting that, according to current United Nations statistics, only 3 percent of the world’s population currently lives outside the nation of its birth. Over the last 30 years, net immigration in countries of the North has risen only slightly (from 6 to 8 percent) (Stalker 2001,10). These numbers, though notable, are nonetheless relatively minor. Yet the impressions we tend to get from the high visibility and affective intensity expressed around immigration in much of the media would seem to suggest the opposite.

The relative statistical insignificance of immigration belies its amplified and charged political significance. As Danièle Lochak (1998) puts it, “Que l’immigration soit une question sensible, cela paraît relever de l’évidence. Mais elle peut être sensible [ou potentiellement explosive] pour des raisons variable, selon le conjoncture politique, selon les époques, et susciter de la part des gouvernants des réponses différentes” (1).<sup>4</sup> Part of the task of this thesis is to question and account for the different ways that im/migration<sup>5</sup> has been problematized and produced as an “explosive” issue in different political and historical conjunctures.

## 2 Theoretical Contexts and Crises

The central themes of this thesis are situated at the intersection of several fields (media, political, social, cultural, governmental) that tend to be approached in a fragmented or exclusive manner, instead of the kind of integrated analysis that is called for in analyzing questions of migration. Consequently, my theoretical approach broadly draws from three interdisciplinary fields: media and cultural studies, migration studies, and social and political theory. While various works in cultural studies have examined the cultural dimensions of media events and media spectacles (Wark 1994; Garber et al. 1993), there has been little consideration of their political impacts and role in the

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<sup>4</sup> “That immigration is a sensitive issue seems to be self-evident. But it can be sensitive [or potentially explosive] for variable reasons, depending on the political conjuncture, according to the historical epoch, and can arouse different responses from those who govern.”

<sup>5</sup> At various points throughout this thesis, I use the slash form of the term *im/migration* to emphasize the continuities and the discontinuities as well as the mutually informing co-constitution of immigration and migration as governmentally-produced phenomena. Whereas immigration refers to a process of permanent settlement and eventual state-approved acceptance into formal citizenship of previous non-citizens migrating to a given nation-state, migration encompasses the many forms of movement across state borders for longer-term purposes other than short-term travel or tourism (from temporary labourers, and expatriate professionals; to refused immigrants/refugees and undocumented workers) (Stalker 2001). I use the two terms somewhat interchangeably in this introduction for similar reasons, while also conscious of the need to pay attention to the distinction between them.

practices, policies, and techniques of governmentality. There has also been a surprising lack of attention to questions of immigration *per se* in both communication and cultural studies, as Ono and Sloop have recently noted (2002, 186).

While critical race and ethnic studies form an important theoretical backdrop to many of the questions raised in this thesis, these fields have also tended to approach questions of migration in a partial, fragmented way (with notable exceptions, such as Thobani 1999; Razack 2007), while the more deliberative approaches that predominate in the field tend to overlook or downplay matters of affect and culture, or frame them in narrow or solely regressive terms (again, with noteworthy exceptions such as Fanon 1967; Cheng 2000). A similar gap exists in the fields of both migration studies and policy studies with respect to the role played by the news media in framing public culture and informing the politics and governmentality of immigration. In both fields there has been a tendency to foreground economic and sociological approaches that neglect the ways in which social and economic forces articulate with and are mutually informed by mediated public culture and cultural politics.

James Hollifield (2000) has recently called for the need to “bring the state back in” as a unit of analysis in migration studies. He argues that the field of migration theory has been dominated by economic and sociological approaches, leading to an overemphasis on economic and push-pull factors in shaping policy regimes in the first case, and on transnational social networks and globalization theories that downplay the role of the state in the second. I interpret this claim, not as a reason to jettison attention to the economic and social dimensions of migration, nor to reinstate a privileged, autonomous, or reified status to the state as a bounded entity, but to insist on the continued centrality of state agencies in the governmentality and regulation of immigration. For Hollifield, this



relative undertheorization of the role of the state can be traced to the marginalization of politics and culture in much migration theory. He argues that the political role of the state in institutionalizing immigration policy and rights regimes remains a crucial variable in the openness or closure of nation-states. He goes on to argue that the articulation and formation of these institutional regimes are closely related to the cultural and symbolic politics of nationhood, i.e. how immigration becomes politicized or problematized in media and public culture, and the impact these cultural factors have on the formation of the formal-legal institutions of nationality. It is precisely this link between cultural and governmental politics that I am interested in investigating, drawing on theories of governmentality and biopolitics in order to explore them further.

I situate my approach to news events in relation to a wider literature that foregrounds the larger cultural dimensions of news, or “news culture” as Stuart Allan (1999) calls it. These approaches tend to highlight the productive and at times performative work of the news media in shaping (rather than just recording, mirroring or distorting) public culture and politics. In so doing, I want to go beyond analyses of news coverage strictly concerned with its adherence to an idealized standard of objectivity or factuality (as it tends to be understood in traditional journalism and mass communications analysis). Allan has traced the historical construction of objectivity (and the fact/value distinction) as central to how Western news discourses are said to operate. While this is a helpful point of departure, I would argue that it is not enough to simply deconstruct such claims to objectivity and factuality. Instead, it is crucial to account for the political and practical “reality effects” that result from the commonsense, realist understanding of news in popular culture, the ways in which the news is popularly allotted a proximate and sometimes performative relationship to “reality,” and a privileged role in setting political

agendas and framing public culture. Against this realist conception of the news, Allan highlights the discursive framing and the critical role of news values in the production of public news culture. In the coming chapter, I go a step further and argue that the affective dimensions of the news media, what I call *news affects*, have also become key to the ways that the news media operate and produce their powerful effects.

The approach to news events developed in the forthcoming pages is informed by the ambient, sensory and spatial dimensions that I argue are central to the way that the news circulates in public culture. Many works in media and communication studies tend to conceive of the news media as primarily textual, discursive, or visual phenomena and analyze these in a mutually exclusive manner. Such analyses tend to adopt a segregated approach according to the type of media (print, television, radio, internet) or the ownership or political orientation of different media outlets (*The Globe and Mail* versus the *National Post*, CTV versus CBC and Radio Canada, *La Presse* versus *Le Devoir*). Fewer works consider the overall circulation and interplay of news as a cumulative flow in the context of everyday life. My approach to the news event therefore is informed by the flow, interaction, and circulation of different news media forms and outlets in daily life.

Furthermore, few people engage with news media texts with close to the kind of thoroughness and scrutiny that an exhaustive discourse analysis of all the media texts produced in response to a given event yields. Most peoples' encounters with news media events tend to be more incidental, partial, and uneven. Discourse analysis may be useful in accounting for journalistic discourses and practices, but tell us little about how news circulates and informs everyday spaces. As a result, discourse analysis is not sufficient as a methodological approach to what I am seeking to account for. Discourse analysis deals with the archival traces of news events, involving a retrospective form of analysis based on

the static remainders of the event. It is therefore limited in terms of the perspective it can bring to bear on news events as everyday, unfolding happenings that permeate a lived environment.

The event-driven nature of the contemporary news media and the selective nature of what becomes constituted as a news event has intensified with the neoliberal reordering of the media (Compton 2004). The corporate news media is increasingly organized around spectacular events (Compton 2004). As obvious as it may seem, it bears emphasizing that such news events are outcomes of the news media's mobilization around an event. I consider this extra-representational mobilization of the media to be as much a part of the event as are the news discourses and representations produced. The "feeding frenzy" of a "media circus" that can accompany the descent of journalists onto a story is as much a part of the news event as the story that ends up on the 6 o'clock news.

The set of relationships I trace throughout this dissertation between news events on the one hand, and governmental policies or practices of regulation in relation to immigration on the other, does not follow a simple effects model of the media. My approach rejects attempts to locate a simple root cause or linear trajectory of cause and effect between one site and the other. Rather, it concerns the "relations of reciprocity" between the two (Hall et al. 1978, 74-75)—the critical and popular definitional work media perform in public culture, as well as the affective force they can mobilize and amplify to propel certain issues to the top of the governmental and public agenda.

Carol Stabile (2001) argues in her critique of Hall et al.'s *Policing the Crisis* (1978) that there are too many complex variables at work in news media coverage of such "hot" issues as crime to isolate clear "Xs" and "Ys" along a linear model of causation. Significantly, the complexity of the variables that Stabile refers to is tied in part to the

affective resonances produced through news media events. The ambient, far-reaching and diffuse currents at work in the mediatized circulation of such affects as anxiety, fear, and insecurity are “notoriously difficult to pin down or measure...[and are] subject to condensation and displacement” (Stabile 2001, 260). This volatility is part of what can make the most highly pitched of news media events overwhelming for the subjects at their center. The intensified circulation of affects tend to produce a multiplication of effects that may be experienced as a media clamour, a sensation of too many things happening at once. Their condensation and displacement may produce an escalation of unanticipated effects that eventually become redirected and reattached—sometimes violently—to the subjects at the center of the event (be they refugee claimants, government officials, or the families of accused terrorists, the latter of which I consider in Chapter 7).<sup>6</sup>

### 3 Panic Mode

A more traditional set of literatures does explicitly address the productive relations between media spectacles and governmental policy, often focused around the affective experience of “panic.” They range from traditional sociological analysis of moral panics (Jenkins 1992), to the aforementioned cultural studies classic *Policing the Crisis* (Hall et al. 1978) which examines the social history of a moral panic around mugging in Thatcher’s Britain, to recent works in sexuality and queer studies that look at sexual panics (Valverde 1991; Shah 2001; Warner 2000; Vance 1984). Several of these works examine the role of news discourses in what Hall et al. (1978) call the “amplification spiral” that results in the

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<sup>6</sup> Unless these subjects are able (and have the resources) to buffer themselves from such reattachments. The obvious example would be the “Teflon” politician to whom nothing “sticks”—a result of sophisticated techniques of self-regulation promoted in the field of public relations, which I consider in Chapter 2.

powerful discursive effects such events and spectacles can have on social policy. David Altheide (1991) has also examined the impact of news formats on social policy, based on the ways that news formats generate a sense of urgency in media events. I will draw on these notions of amplification and momentum as generated in moments of urgency later in Chapter 2, though I will reframe them based on my divergence from such theoretical frameworks.

Recent critiques of theories of moral panic shift the terrain of analysis away from exceptional panics to a wider and less functionalist emphasis on affect (Massumi 2002; Grossberg 1992). The notion of a moral panic is inadequate here insofar as these media events are not exclusively framed in strictly moral terms, while the affective currents they set off are much broader and more complex than the limited and rather exceptional notion of panic. Ultimately, any nuanced consideration of the affective dimensions at work in such events call for a departure from “moral panic” approaches.

In his reframing of the moral panics approach to the notion of “affective epidemics,” Grossberg (1992) foregrounds the question of affect as a social and political force and explores how it is elicited through what he calls popular “mattering maps”—the affective investments, from mood, to desire, to passion or will, that anchor people’s experiences in social and political formations (282-283). He argues that affect is mobilized politically through “affective epidemics”—sites of disproportionate investment and affective excess in a social formation that proliferate to the point of becoming socially pervasive. Such epidemics have the power to politically redirect these investments. News media culture, of course, plays a central role and in some sense constitutes the very terrain of this process.

While Grossberg's approach has been faulted for an overly discursive rendering of affect, not recognizing the extent to which discourses and affect operate through different registers (Massumi 2002, 260), his formulation of questions regarding the social and political force of affect in such events is key to my project. It offers a move away from some of the limitations of the notion of moral panic, by regarding such events less as disruptive and exceptional crises, and more as moments of affective excess that are central to the recuperation of state regulation and the governmental formation of policy. However, such an analysis risks falling into the same functionalist trap as the moral panics approach if it presents this recuperation as too much of a fixed or closed system, particularly if it elides the moments of instability, indeterminacy, and incompleteness that are always at play in such events. Herein lies the tension in attempts to account for the political role of affect in such events, a tension between structural or discursive reductionism and claims for such a complete autonomy that matters of affect become delinked from matters of power and social relations.

Stabile's critique of *Policing the Crisis* is significant here as well, particularly her caution about the knowability of public opinion (as opposed to its industrial production) in contemporary liberal democracies. Stabile (2001) argues that the moral panics approach in such works as *Policing the Crisis* tends to conflate public opinion and the "control agencies" that organize the industrial production of public opinion. This does not imply, as Justin Lewis (2001) cautions, that any appeal to statistics or public opinion polls operates through an uncritical empiricist faith in the opinion industry and should therefore be abandoned. Nevertheless, as Stabile argues, it is problematic to uncritically accept the views emerging from public opinion polls or other *vox populi* methods invoked in news events as authentic or transparent expressions of "the people."

Stabile challenges the way that *Policing the Crisis* uncritically accepts the news media's construction of public opinion as evidence of popular consent to the hegemonic law and order policy agenda of elites, arguing that the notion of causality underlying the moral panic "substitutes the media's simulacrum of consent for its reality" (265). The operation of liberal modes of governmentality through this equation of public opinion with consent will be particularly relevant when we consider the use of public opinion polls in the news media coverage of the Fujian Chinese boat arrivals in 1999. Yet what I also hope to account for is the extent to which the affective climate produced by the news media in such moments makes the kind of slippage that Stabile problematizes between the simulacrum of mass consent and "real" popular consent *appear* all the more compelling, based precisely on the performative work of the news media in its citation of opinion polls and the reality effects they produce in such events.

The traditional literature in cultural studies has tended to approach these questions and dilemmas through the lens of theories of ideology and hegemony. In the forthcoming chapters, my reasons for preferring the relative merits of theories of biopolitics, governmentality, and affect as a means to address the concerns and questions at stake in this thesis will become clear—particularly in Chapters 3 and 4, where I offer a fuller account of my approach to and recasting of theories of governmentality and biopolitics through an emphasis on the workings of state racism.

For now, I would like to underline that, in the interval that has passed between my first formulations of the theoretical groundwork drawing on these approaches for this thesis and its completion, we have witnessed an explosion of theorizing around notions of biopolitics and affect. In some ways, I have resisted the theoretical currency of these terms, and have sought to avoid framing them as the "new cutting edge" (Hemmings

2005, 548)—a sure way to go out of academic fashion quickly, as certain conferences and journals carrying the titles of “beyond biopolitics” or “beyond affect” would indicate. Yet I have repeatedly returned to these theoretical approaches as the most resonant and appropriate to the questions this thesis engages.

In delving into these theories, I have also sought to avoid grand theoretical pronouncements of the sort that claim to offer an explanatory paradigm or totalizing theory of biopolitics as *THE* way to understand contemporary modes of power (or conversely, that we are now beyond biopolitics and post-affect). For instance, some have argued that the political operations of affect in contemporary societies signal the arrival of an era of posthegemony (Beasley-Murray 2001). My mobilization of these theoretical terms is more modest and less epochal. While it is true that questions of affect remain the blindspot of most political theorizations of hegemony and ideology, I am less interested in waging battles over theoretical or historical paradigms than in productively exploring the contributions and limitations that recent theorizations of affect bring to bear on the questions this thesis asks about the political effects of news events on the regulation of migration.

#### **4 Affective Politics**

Greg Seigworth has suggested that affect is a kind of “other language” that cultural forms elicit and operate through, “something more” than the linguistic markers of signification tied to discourse and language. Affect is tied to variations and passages of intensities and sensations, to physical and sensory effects that act on the entire body. Recent work on affect in cultural studies draws a distinction between affect and emotion,



arguing that one is not reducible to the other (Seigworth 1999; Massumi 1995). Whereas emotions tend to refer to discrete states that are experienced as subjective moments of interiority, affect refers to a less subjective, a-signifying set of embodied resonances, sensations, and intensities that circulate socially between bodies and accumulate to form a kind of backdrop, tone, or climate (Ngai 2005). Affect is both embodied and social. It travels between and amongst bodies and populations, feeding and cementing the feel of everyday life. In everyday parlance, we tend to speak of affect as a *vibe*, something that *moves* people and social processes, something that “takes off” and catches on, something that is (or can be) “contagious” (Brennan 2004).

Several theorists have argued that the effectivity of contemporary media cultures and forms reside not solely in their discursive contents, but their operation through affect (Massumi 2002; Terranova 2004b; Marks 2000). My opening chapters consider how news media culture, particularly the highly networked nature of contemporary news media and its emphasis on immediacy, “liveness”, and instantaneity, is central to the intensified, accelerated, and amplified social circulation of affect—particularly through the momentum of news events.

Against a deliberative model of journalistic discourse as an idealized rational public sphere, I draw on this emerging literature on affect to examine the affective dimensions of news culture, particularly in terms of some of the qualitative modalities that are characteristic of large-scale news events: repetition, pervasion, intensity, amplification, and the flow of what I call “ambient news” (McCarthy 2001). The mobilization of a media spectacle around a particular event brings about its intensified circulation and proliferation in public culture to the point where it may come to form a pervasive, ambient environment. Most of us have experienced days where we walk out onto the

street (if we haven't already tuned into the media at home), and a specific news event is everywhere. Everywhere we go, it hits us in the face: at newsstands, on the radio, on television at home, on outdoor ambient television screens (McCarthy 2001), on public transit, from radios in passing cars, on podcasts. It soon suffuses daily conversations. It resonates and amplifies. We feel it all around us and "in the air." Wherever we go it seems to be "happening", ambiently buzzing, live off the pickup. It follows us in daily life and infiltrates our day-to-day conversations (even when we do our best to ignore it). In such moments, however uneven and localized the effects, the news event becomes ambient—amplified to the point of creating an ambient environment rather than just contributing to one. The biggest, "hottest" media events inflate to the point that they become over the top, larger than life feeding frenzies. Though they may involve highly differentiated and segmented news flows, the amplified circulation and accelerated flows of such news events nonetheless produce an overarching climate, what Terranova calls "[media] space that is common without being homogenous" (2004b, 153, 154).<sup>7</sup> In this sense, news events are experienced spatially as sensual, embodied encounters.

Building on these ambient, embodied qualities, a key emphasis of my approach to affect relates to the close links between affect and corporeality. Affect moves and circulates between and among bodies. Bodies in relation to one another are the vessels of affect; hence my foregrounding of its sensory and material aspects. The sensory components of media and communicative events generate and produce affects, from the tone of a speaking voice, to non-verbal gestures, to iconic visual images. The

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<sup>7</sup> Terranova goes on to elaborate on the tension that she is navigating between the differentiations and segmentations of media flows versus the overall space they give rise to (what she refers to as network culture): "...a high-level of microsegmentation of usage...this separation can never really neutralize the interconnectedness of the whole space, the overall vulnerability to informational dynamics, chain reactions, viral infections...the powerful ripples of nonlinear information flows" (2004b, 153).

amplificatory qualities of affect arise out of the circulation of these sensory elements in a media event, which in turn amplify particular affective tonalities that impinge upon different bodies in different ways. For instance, the fear-inflected affects that circulated in the post-9/11 mediascape produced an affective spiral that was both pervasive and targeted in its effects on specific, racialized migrant bodies.

At several points in this work, I draw on Sara Ahmed's account of how affects become attached to specific bodies, particularly with respect to how racialized or non-normative bodies become marked as sites of threat (2004, 91-100). However, I depart from Ahmed's reading of affective economies in terms of psychoanalytic theories of lack and Marxian theories of surplus value, resulting in an emphasis on the role of emotional excess in surfacing bodies and collectivities. I would argue that these claims endow affect with an overburdened and overly constitutive role in surfacing the materiality of the body itself (44-46).<sup>8</sup>

As a result, I locate my larger approach to affect within a renewed cultural materialist project (see Chapter 2). Such a project embraces an expanded corporeal materialism based on an embodied epistemology and understanding of the media (Marks 2000). It seeks to account for the political and governmental role that media events play in their affective dimensions in ways that go beyond the level of the symbolic or the purely visual/visible embraced by traditional theories of representation. Such an approach thereby departs from the more narrow, mechanistic poststructural renderings of the social construction of subjectivity, along with the reductionism of some of the more traditional Marxist approaches to propaganda and ideological state apparatuses.

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<sup>8</sup> For a more extensive critique of Ahmed's notion of affective economies, see Patricia Clough's introductory essay in Clough (2007).

However, in critically engaging elements of the affective turn (Clough 2007), I also want to avoid claims that embrace affect as a kind of theoretical “panacea,” as constituting some sort of “silver bullet” in the manner that some of the more celebratory theorizations of affect tend to do. The approach to affect developed in the coming pages departs from some of the more recognized recent theories of affect in several ways. These can best be elucidated by briefly considering some of the tensions inherent in theorizations of affect in its relationship to politics.

The first tension lies between a focus on the structuring force and power effects of affective flows in media events, what Grossberg calls affective epidemics, versus a more Deleuzian emphasis on affect as a free-floating, phenomenological sensory mode that can never be completely captured by structural rationalities. In navigating this tension, Lauren Berlant (2003) has questioned the extent to which the “sensual turn” may serve to elide the very matters of social inequality and power that it claims to refigure. Clare Hemmings (2005) has also critiqued what she calls a theoretical celebration of affect as the new cutting edge and “*the way forward*”, one that eclipses questions of social structure and power by placing affect outside social meaning and engagements with the nature of the social.

A second tension relates to the gap that is posed between, on the one hand, discourse, language, or representation and, on the other, affective and sensory modes. Some theorists have formulated this gap as wide, absolute and autonomous (Beasley-Murray 2001; Massumi 2002). While I would agree that there are limits to the extent that affect can be fully accounted for in language, I ultimately want to question and trouble the gulf that many theorists of affect posit between discursive/linguistic/representational versus affective modes. As Amit Rai (2006) has noted, claims that the activation of bodily

responsiveness through affect has no content, or that affective modes of power are not also modes of representation that differentially target different bodies, is politically limiting in a post-9/11 context. I will pursue these questions in Chapter 2, arguing for a relative autonomy rather than a total autonomy between language and affect (Hall 1980). I will do so by considering some of the non-discursive operations of language as well as sensory media units that I will call *mediaphemes*. My stance is also rooted in a cultural materialist refusal of the kind of mind-body distinction that I would argue underpins many claims for the total autonomy of affect from language, discourse, or conscious perception.

Thirdly, while the distinction between affect as pre-subjective sensory intensity and emotion as subjective response remains relevant for this inquiry, I concur with Sianne Ngai's recasting of the difference between the two as a matter of modal intensity rather than a formal distinction of quality or kind (2005, 27). As she argues, affects may be "less formed and structured than emotions, but not lacking form or structure altogether; less 'sociolinguistically fixed,' but by no means code-free or meaningless; less 'organized in response to our interpretations of situations,' but by no means entirely devoid of organization or diagnostic powers" (27). As befits a work dealing with post-9/11 migration politics, my many invocations and discussions of fear and suspicion in relation to these politics often cross the affect/emotion boundary in the ways that Ngai suggests. The enormously labile and contagious qualities of fear endow it with a particular capacity to move across the affect/emotion divide.<sup>9</sup> Ngai has similarly noted that a crucial quality of affects of suspense and suspicion are their diffuseness, the way they tend to oscillate

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<sup>9</sup> For more on fear as both affect and feeling, as well as the process of relay between the two, see Massumi 2005b.

between subjective and objective sources, to slip in and out of subjective boundaries. The diffuseness of suspicion Ngai describes, the inability to locate the source of the threat or determine a feeling's subjective or objective status, resonates with the affective spiraling of suspicion in key moments of the post-9/11 news event that I will consider.

Finally, much recent work on affect focuses on its affirmative potential. In such accounts, affect constitutes a source of emergence and newness in social and cultural formations, what Deleuze calls "lines of flight," that can escape the capture and orderings of governmental power and present crucial resources for political change. This is an important and overdue corrective to traditional ideological and deliberative forms of analysis that have tended to frame affect as a strictly regressive force. It also resonates with the ways in which affect is being increasingly and more explicitly mobilized as a site of political and social intervention by social movements, particularly in Latin America, where an affective politics (*politica afectiva*) has become a widespread and explicitly recognized form of political practice in Argentinian autonomous social movements (Zibechi 2003; Sitrin 2006). Indeed, at key points in the coming pages, I briefly consider the affective counterpolitics of activist initiatives in support of non-status and detained migrants targeted by repressive governmental practices.

However, I also want to avoid overly utopian accounts of affect that pose it solely in terms of an unproblematic potential for transformation, neglecting the way that affect is also mobilized for regressive and exclusionary political agendas, or as a "central mechanism for social reproduction" (Hemmings 2005, 551). Affect is also mobilized to enact powerful forms of exclusion and containment, particularly in relation to certain kinds of bodies on the move, which the major portion of this work will be preoccupied with. Indeed, this inquiry is particularly concerned with the various ways in which the

news media and the government work together to effect a social production of affect, one that has an institutional and structural basis. Affect is something that is subject to sophisticated and coordinated forms of production in relation to the media. This is not to suggest that such forms of affective production can be entirely predetermined or guaranteed in advance. There is never a completeness to the elusive workings of affect. There are always potential margins of manoeuvrability at play in its looseness, noise, and inexactness (Ngai 2005, 55). It is always supplemented and responded to by situated people in their daily lives in ways that can be somewhat programmed (through habits, training, participation in popular and media rituals), but never completely programmatic or even in its effects. Yet there are particular moments in political events when some of the more programmed and coordinated mobilizations of affect produce undeniable effects and overdeterminations. Consider the ways in which the affective climate of insecurity and fear generated by the September 11<sup>th</sup>, 2001 attacks in Washington and New York was channeled into habituated repertoires of militaristic vengefulness, into calls for securitization and “tough responses” that initially resulted in widespread popular support for racialized and unilateral militaristic policies in the United States. The challenge lies in how to understand these moments as potentially overdetermined yet also incomplete (and therefore ripe with other potentialities); to acknowledge the scale of the coordinated production of affect in such moments without falling over the edge into an overly deterministic analysis.

A crucial dimension of affect that I want to explore and develop in the forthcoming account, then, is the political and mobilizing social power at work in the affective flows of such moments. I want to explore the political force that affect carries in these moments of contagion and circulation in media events, the impact it can have on

the regulatory and structural “rationalities” of governance. To paraphrase and intentionally distort Gramsci, the affective dimensions of popular media culture can carry the same energy as a material force (Barrett 1994, 236). In this way, a central question this project asks relates to how a politics of affect is elicited in media events, and how it comes to impinge upon the regulation and governance of migration.

Indeed, theories of biopolitics and governmentality suggest that the posing and dramatization of threats to the population play a strategic role in the biopolitical interventions of state racism. Such a strategic biopolitical process does not work through a strictly instrumental logic, a disembodied governmental rationality, or a top-down process of mass suasion. Political affect is central to the effective governmental mobilization of a sense of threat to the population, which cannot effectively take place in contemporary societies without the news media. This thesis argues that affect is a crucial mode through which a biopolitics of migration operates and get enacted in Canada, particularly through the biopower of news events.

## **5 Methodological Approaches**

The methodologies that I draw on in the forthcoming pages to build an account of the political role of news events in the shifting governmentality of Canadian migration employ elements of interpretive and discourse analysis (of the news media and policies in question), qualitative interviews, as well as endeavors to explore and develop new approaches to some of the lesser trodden terrain that I engage. As I have indicated, the focus in this thesis on the politics of affect necessitates a move beyond discourse analysis as an exclusive method. As a result, Chapter 2 offers a methodological approach to account



for the affective dimensions of news events based on the media's mobilization around the boat landings of Fujianese migrants in 1999. Following this, Chapter 3 draws on interpretive and discourse analysis to consider the governmental trajectories and the drastic policy responses by Citizenship and Immigration Canada (CIC) that ensued. As my most explicit methodologically-oriented chapters,<sup>10</sup> Chapters 2 and 3 together seek to elaborate an account of the assemblages of affects, discourses, and corporealities mobilized and produced through the exceptional governmental response to the boat landings.

Additionally, in departure from the mainstream news media texts and policies that make up the predominant corpus of analysis in this thesis (see Appendix 5 for an overview), I have sought to respond to the considerable challenges of engaging with and attempting to actualize some of the more intangible qualities of affect in its relation to politics by drawing on four alternative textual modes and sites of research. Firstly, at key points throughout the thesis that deal with questions of affect (particularly Chapter 2), I adopt a slightly different, more informal and experimental voice in the text. I have found this more anecdotal, colloquial voice to be a necessary and suggestive methodological strategy to evoke the everyday, informal parlance where affective registers tend to surface and become more apparent. Secondly, towards the end of this work in Chapters 6 and 7, I draw on several testimonies by im/migrants, as well as their family members and activist supporters, who have been directly targeted by post-9/11 immigration security measures. Delivered at the People's Commission on Immigration Security Measures in Montréal in

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<sup>10</sup> I would like to note here that my emphasis on methodology in Chapters 2 and 3 is not intended to detract from the conceptual contributions these chapters make (particularly in relation to such concepts as the *mediapheme* that I introduce in Chapter 2). Indeed, I see questions of methodology and theoretical commitments as closely related and mutually informing.

April of 2006 (discussed further below), these testimonies offer a significant and often vivid index of the affective, bodily, and lived impacts of these governmental policies on those targeted by them.

Thirdly, along with news media and policy analysis, at certain very specific points in the thesis I also turn to several independent, intercultural<sup>11</sup> video productions by Canadian artist/filmmakers Paul Wong (2000), Ali Kazimi (2004), and Sheila James (1999). These works can be situated within a broader tradition of intercultural and politically committed film and art video that emerged in the distinctive context of Canadian and Québécois independent productions of the 1980s and 1990s (Kin Gagnon with Fung 2002a; Gale and Steele 1996), although at least one of the filmmakers (Kazimi) has also had a significant career in feature documentaries for broadcast television. My purpose in invoking these works in this punctual, abbreviated manner is rooted in each work's engagement with the buried histories as well as the lines of flight generated by the historical and ongoing practices of racialized exclusion in Canadian immigration policy. Each in its own ways constitutes an important affective counterpart<sup>12</sup> to the policies and practices under consideration.

Finally, over the course of my research for this project, I conducted a series of seven qualitative interviews, with immigration and refugee lawyers, two activists from Direct Action Against Refugee Exploitation (DAARE) who did political support work for some

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<sup>11</sup> In *The Skin of the Film*, Laura Marks (2000) defines intercultural cinema as an emergent genre of film and video largely based in the practices of diasporic and migrant populations in the West. Suggesting a form that cannot be confined to a single culture, intercultural works are often short (due to production and funding constraints), formally experimental, and often with a distinctly activist bent. They often confront the particular crisis that arises from the political discrepancy between official national histories and the personal and collective memories of marginalized and racialized communities.

<sup>12</sup> The role that film and art play as privileged sites in the working and reworking of affect, as well as the production of new affective registers, is a major subject in and of itself—one that is hinted at and evoked in my consideration of the works of each of these artists. For more on these questions, see Marks 2000; Kin Gagnon 2002b; Massumi 2002; and of course, Deleuze 1989.

of the Fujianese women detained in the summer of 1999, and filmmaker Ali Kazimi (director of *Continuous Journey* which I discuss in Chapter 4). These interviews were conducted to gain practical insight into the news media events I examine, their effects on the legal/policy process, as well as their impacts on the migrants at their center. The interviews also sought to draw on a different site of knowledge production than the media and textual sources that I predominantly engage with.

While several of the interviews have yielded important findings and insights that I present punctually at specific points in the coming pages, I should note that they were not undertaken with the intent of conducting a full-scale ethnography. In keeping with the ethical research protocols that I followed in conducting the interviews, I have maintained the confidentiality of all but one of the interviewees (filmmaker Kazimi who spoke directly about his film). I have also changed certain identifying details where specified in the text.

In the course of my own support work with several non-status individuals fighting deportation as part of an alliance of activist groups and non-status migrant communities in Montréal, I made a decision to focus the interviews I would conduct on participants who work with immigrants, refugees, and non-status peoples, rather than non-status, migrant, or refugee peoples themselves.<sup>13</sup> I did so because I did not feel that this research required or merited imposing upon already vulnerable and over-solicited people—be they im/migrants or refugees—who, in many cases, have had to undergo endless interviews and recountings of their life narratives for administrative and legal officials. I therefore chose to interview participants who are relatively highly empowered with respect to the subject matter at hand (lawyers, advocates, artists). Nevertheless, as already noted, I have found other ways to include and address the voices and experiences of several of the

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<sup>13</sup> Of course, at times, there are overlaps between the two.

im/migrants directly targeted by some of the policies I examine, largely through the work and materials made available by such activist and community initiatives as DAARE and the People's Commission on Immigration Security Measures (in Montréal).

I have also engaged in an informal participant observation of sorts, as part of my involvement in recently emergent migrant-led activist networks that have sought to counter and oppose the Canadian government's treatment of non-status migrants, particularly after the events of 9/11. This includes direct support work with several non-status individuals and their families fighting deportation, which was undertaken in conjunction with the Montréal activist network Solidarity Across Borders. It also extends to my participation in a collaborative community-based action research initiative with the People's Commission on Immigration Security Measures in Montréal in 2006-2007 (elements of which I cite in Chapters 6 and 7). As someone who has sought to bridge the often divided fields of scholarship, activism, and the arts in my own practice, I have found that while many in the academic world claim, and in some cases, display or tout their affiliations as activist scholar/artists, the actual instances of individuals who do so in an ongoing, rooted and thorough way are fewer. The competing institutional, political, and energy claims such grounded forms of scholarship make are challenging to navigate and not often institutionally supported, which means that they are therefore not expedient or workable for many.

As a result, I find myself somewhat reticent and reluctant to replicate the hype that can accompany claims to the status of activist scholar, despite my ongoing commitment to maintaining these cross-affiliations and cross-fertilizations in both my academic and non-institutional work. For these and other reasons, I have not made the insights and perspective I have gained through my work with these activist initiatives a central or

explicit thematic of the dissertation, though they have strongly informed my theoretical and political approach. In part this choice is also due to ethical commitments around matters of confidentiality and my reluctance to have this research play an overly parasitic role in relation to the individuals I have worked with. I did not attempt to formalize these cross-engagements in terms of an ethnography, participatory action research, or other research approach with the appropriate course of mutual consent. Like the activists from DAARE that I cite in the closing pages of Chapter 3, in many ways, I did not feel that these were my stories to tell. As I signal in the closing postscript, I do, however, see these engagements and the questions they have raised as informing a line of research that I intend to undertake along more explicit and formalized lines in the future.

I do however want to acknowledge the incredible contributions these activist networks have made in the production and dissemination of public knowledge of the harsh impacts that the recent shifts in immigration policy have had on im/migrant communities in Canada. The often tireless work of many to build a mounting culture of dissent against these policies is inspiring, if sometimes daunting. The many things I have learned through my participation in these initiatives have enriched this thesis in many ways.

Finally, in addition to its contributions to the fields of media and cultural studies, this thesis has also been inspired by and hopes to contribute to a growing body of scholarship that takes a critical and engaged approach to migration studies and immigration politics in Canada. Such scholarship challenges the prevalent image of Canada as an exclusively benevolent, welcoming nation to immigrants, refugees, and non-citizens, as well as the continuing settler colonial treatment of First Nations peoples and lands. In this, my thesis aspires to contribute to the growing body of research by such

engaged scholars as Rita Wong, Wendy Chan, Nandita Sharma, Anna Pratt, Peter Nyers, Cynthia Wright, Jenny Burman, Rose Baaba Folsom, Nupur Gogia, along with more established, longer-standing research by Mariana Valverde, Danielle Juteau, Sunera Thobani, Roxana Ng, Sherene Razack, Donald Avery, Himani Banerji, Daiva Stasiulis, Yasmeen Abu-Laban, Agnes Calliste, Peter Li, Franca Iacovetta and other scholars in the interdisciplinary field of Canadian migration studies. By bringing a different set of theoretical perspectives and literatures to bear on this field, my aim is also to explore what it is that media and cultural studies can offer migration studies in ways that have not been extensively considered or advanced previously. The many resonances this thesis has, as well as the departures it makes, in relation to this larger body of literature arise out of both a theoretical and practical engagement with the effects of shifting immigration policies on the people governed by them—whether they be refugee claimants facing automatic suspicion as bogus refugees, or those whose bodies are deemed “risky” in any number of ways within the emerging smart border regime. In this way, the accounts I offer in the coming pages arise out the practical realities and challenges posed by recent, dramatic shifts in the regulation of immigration. I am certainly not the first to address them, but this work aims to build on and enrich the range of questions taken up in the existing literature.

## 6 *Affective Politics, Effective Borders: An Overview*

The central thematics of this work can be traced along three key lines of analysis and argumentation that extend throughout the coming pages. Firstly, this thesis investigates and theorizes news media events as key nodal points in the governmentality of migration in Canada, based on the affective as well as discursive work that they perform politically (Chapters 2 and 3). Secondly, this work traces key shifts across time in the governmentality of Canadian migration and its attendant forms of state racism—from an early settler colonial necropolitics (Mbembe 2003), to a eugenic racism (Chapter 4), to a contemporary biopolitics of migration articulated around security, fertility, and “protection” (as explicitly announced in the most recent *Immigration and Refugee Protection Act* of 2002) in Chapters 5, 6, and 7. Thirdly, the latter part of this work develops a comprehensive account of the contemporary biopolitics of migration that have developed over the past thirty years, including their intensification and rearticulation in relation to matters of security and “protection” in the post-9/11 era as crystallized in two key pieces of policy passed at this time: the *Immigration and Refugee Protection Act* (2002), and the *Safe Third Country Agreement* (2004). This biopolitics is characterized by a state racism that targets racialized “risky” bodies with exceptional measures based on a pre-emptive targeting of potential acts. The concluding chapters consider how the affective biopower of the news media played a crucial role in this governmental profiling of bodies deemed to be threats to the population, in ways that strongly shaped the so-called smart border regime that has emerged.

A final, minor yet important thread throughout this work relates to the lines of flight and outlaw politics that have emerged to challenge this biopolitical regulation of

migration. These are articulated across a range of scattered but mutually informing sites that are considered at relevant intervals throughout the coming pages. They range from intercultural film and video works, excerpts of interviews with activists from networks opposed to deportation, detention, and the overall treatment of non-status peoples, to the voices of those targeted by these policies. In the postscript, I return to and close with this minor yet critical theme (Deleuze 1986) as an open line of further inquiry for the future.

This thesis is structured in three parts. The first part, consisting of Chapters 2 and 3, focuses on the so-called Summer of the Boats and the news media event around the landing of four cargo ships carrying almost 600 Fujian Chinese migrants off the coast of British Columbia in the summer of 1999. As I have already indicated, Chapter 2 offers an account of the affective dimensions of the dramatic news media event that ensued with the Fujianese boat landings, arguing that they played a central role in shaping the racialized governmental response that was enacted by Citizenship and Immigration Canada (CIC). This chapter perhaps constitutes my most explicit contribution to the field of media and communication studies, developing a methodological approach for analyzing affect in news events through a focus on the amplificatory capacities of the media, along with their sensory and material dimensions. The latter are encapsulated in the notion of the *mediapheme* that I will elaborate as a key conceptual tool to trace the work of news affects.

Chapter 3 turns to a consideration of the narrative and discursive dimensions of the news event, tracking the emergence of discourses of racialized illegality, “human cargo,” and the threat posed by the transnational criminal figure of the snakehead. Theories of governmentality along with the concept of the state of exception (Agamben 2005) are examined in order to account for the news event’s role in the ensuing



problematization of human trafficking and the exceptional governmental response of mass detention and deportation, all of which were framed as a matter of benevolent “protection.” Finally, the contestation of the media and governmental response to the migrants by the activist group DAARE (Direct Action Against Refugee Exploitation) are examined, particularly with respect to their foregrounding of the detained migrants’ voices and the embodied impacts of the migrants’ caging and removal.

In the second part of this work, I offer a historically-informed account of state racism in Canadian immigration policy, examining how the historical co-existence of explicit and implicit forms of racialized exclusion in immigration policy gave way to a rearticulated biopolitics of immigration in the celebrated policy reforms of the 1960s. I argue that, while the reformed policies of the 1960s are typically heralded for their progressive elimination of racism and race from immigration selection, they in fact enacted racialized, sexualized, and economic forms of exclusion along increasingly implicit, virtualized lines. Opening with Ali Kazimi’s film *Continuous Journey* (2004), Chapter 4 takes the film’s focus on the unmarked nature of the Continuous Journey regulation’s exclusion of South Asian passengers of the Komagata Maru ship in 1914 as a starting point to elaborate an account of the historical virtualities of exclusion in immigration policy. The chapter develops an account of state racism through a closer examination and recasting of the literature on biopolitics and governmentality. Two prior historical formations of Canadian immigration policy informed by a settler colonial necropower (Mbembe 2003) and an explicit eugenic racism in the earlier 20<sup>th</sup> century are considered as crucial antecedents to the transition from explicit to virtualized forms of exclusion in the 1960s.

Chapter 5 traces the emergence of this sexualized and racialized biopolitics of migration in the 1960s as a rearticulation of historical forms of state racism. A key feature of this emergent biopolitics was the sexualization of immigration with respect to fertility, in which immigration became framed as a policy tool for intervening in the falling fertility rates of the Canadian population. This is tracked through the introduction of the *Green Paper on Immigration and Population* in 1975, as well as the particularities of Québec's immigration politics, whereby the prominence of demographic discourses and the emergence of a specific notion of linguistic security can be traced forward to the contemporary debate on "reasonable accommodation." The latter half of the chapter shows how, once immigration becomes understood as the unavoidable route to future population growth, it becomes subject to ever mounting, implicit forms of racialized regulation. The flipside of the increasing push to attract "desirable" immigrants and optimize desirable population growth for the life and health of the nation, most recently couched in a neoliberal discourse of attracting the world's "best and brightest," is an expanding screening and exclusion of "undesirable" migrant bodies. I explore how the newly articulated forms of exclusion enacted from the 1970s to the 1990s were framed as a matter of monitoring *potential* dangers, threats, and excessive burdens to the population through a biopolitics of security and criminality, the precarity of temporary labour, health, and the humanitarian protection of "authentic" refugees.

The final part of this thesis examines the intensified biopolitics of security and the unprecedented targeting of migrant bodies that have emerged with the post-9/11 "smart border regime" of the newest *Immigration and Refugee Protection Act* (IRPA) (2002) and the *Safe Third Country Agreement* (STCA) (2004). Chapter 6 focuses on the governmental trajectories of the highly affective news event around 9/11, in which the media's

amplification of fear and suspicion regarding a presumed “Canadian connection” to the 9/11 attacks led to a major assault on refugee policy and the reinscription of Canadian immigration policy as a weapon in the “war on terror.” Revisiting the governmental outcomes of the news event around the Fujianese boat landings of 1999 with respect to the vastly expanded automatic detention measures and anti-trafficking policies introduced in Bill C-11 (the precursor to the IRPA), the chapter goes on to consider the massive scope of the governmental shifts that were introduced through the IRPA and the STCA. It examines how these new policies have mobilized a language of “safe zones,” “smart borders,” and “protection” to deploy a vast arsenal of detention, interdiction, deportation, profiling, and security measures that target racialized migrant bodies (particularly those marked as Muslim, Middle Eastern, or South Asian). This securitized biopolitics subjects racialized non-citizens, and more recently those deemed to be “home-grown” threats, to increasingly exceptional measures (indefinite detention, rendition to torture, a security certificate procedure with no due process). A phantom terrorist body produced and amplified by the news media post-9/11 was made palpable as an affective fact (Massumi 2005) and a biopolitical threat that became the basis for governmental policy targeting, while the non-materialization of a “Canadian connection” was rendered a *media non-event*, eclipsed in the news media by the mere *potential* for one to have existed.

Finally, Chapter 7 concludes by examining how these post-9/11 biopolitics of migration increasingly operate through a preventative governance of risky bodies, potential acts, and precarious movements in which the news media play a central governmental role as affective modulators of risk and threat. Key to the latter has been a sequence of post-9/11 news events amplifying a series of monstrous migrant figures of threat, sexualized “trafficked” bodies, as well as a “broken (immigration) system.” The

governmental links between elements of the news media and the security agencies of the Canadian state are also examined based on such coordinated practices as media leaks of unsubstantiated insinuations regarding targeted migrants. This can result in the production of a circular governmental loop when news articles based on these leaks are entered as evidence into the exceptional legal proceedings of immigration security cases. Based on testimony by family members of migrants targeted by security certificates (such as Mohamed Harkat and Adil Charkaoui) at the People's Commission on Immigration Security Measures in 2006, the impacts of the spectacular news media events surrounding the arrests of alleged terrorists on the lives of those at their center are also considered. Chapter 7 shows how a key element to emerge at the core of these securitized biopolitics is a racialized notion of risk, resulting in increasing practices of risk assessment and an intensified targeting of "risky" bodies. Migrant bodies marked along racialized, sexualized, and economically precarious lines are thereby subjected to the differential, repressive face of the "smart" border. This final chapter concludes with some reflections on the implications of the critical role media biopower has come to play in reshaping the governmentality of migration in Canada, and how the exceptional governmental measures introduced in the wake of the various news events this thesis examines became normalized in subsequent immigration policy measures.

Throughout the process of researching and writing this work, I have become acutely aware of the politics of knowledge production that have shaped the conditions of this thesis. As I approached the completion phase, every time I checked a bibliographic citation, consulted a library book, or went online to check an item of information, I have been repeatedly reminded of the increasingly differential rights regimes that govern the post-9/11 biopolitics of migration. Often when I did so, I could not help but think of the

restrictive release conditions imposed on four of the five remaining security certificate detainees (which I discuss further in Chapter 6), and particularly of Adil Charkaoui, a graduate student at the Université de Montréal at the time of his arrest on a security certificate in 2003. Charkaoui is also the primary plaintiff in the historic Supreme Court case that led to the striking down of the security certificate provisions of the IRPA in February of 2007. Among the highly punitive release conditions that he remains subject to despite the Supreme Court decision, Charkaoui is not permitted to be in the same room with, let alone consult, a computer with an internet connection, and he must submit a list of any library books that he wants to consult for approval by the Federal Court. Under these conditions and with the support of family members, he recently completed a master's thesis in education. The fact that recent immigration security policies insinuate themselves into such extensive and, in many ways, intimate realms shows the degree to which access to knowledge and to the means of knowledge production remain deeply political, and it would seem, increasingly biopolitical.

## CHAPTER TWO

## GHOST SHIPS IN THE “SUMMER OF THE BOATS”

### THE AFFECTIVITY OF NEWS EVENTS

The summer of 1999, British Columbia. Four separate fishing trawlers carrying 599 Fujian Chinese men, women, and children attempt to land on Canada’s west coast over a period of two months. After several games of cat and mouse, the Coast Guard, the RCMP, and Citizenship and Immigration Canada agents intercept the boats and process the migrants who make refugee claims. From the arrival of the first boat, the police and CIC efforts to track the boats for interception purposes were in major competition with boatloads of journalists who chased the boats on the open waters. The scale of the news media’s mobilization set off a major media frenzy with each new boat arrival. This massively mediatized event culminated in the largest mass deportation in recent Canadian history.



Figure 2.1: *The Globe and Mail*, July 21, 1999

## **1 Tracing Assemblages of Affects, Discourses, and Corporealities: Methodological Reflections**

In the introduction, I argued that discourse analysis is limited as a methodological approach in accounting for the ambient nature of news media events. Yet questions remain regarding how to go about examining the non-discursive workings of affect in these news events, and what analytic strategies are available or can be developed. A particular methodological challenge is posed by the accelerated circulation and diffuseness of news affects in media events, which have powerful effects yet remain largely unaccounted for in both journalistic practices and media/cultural studies. How does one go about accounting for something that has, methodologically-speaking, largely evaded and defied such analysis? If discourse analysis is limited, what approaches might lead us to understand the political effects of news events in relation to both their discursive and affective dimensions? This is the challenge of the coming two chapters.

Some would argue that the very attempt to offer a methodological approach to the analysis of affect is self-defeating, insofar as critique and analysis are already modes that are disjunctive from the affirmative operations of affect. Ngai underlines the elusive and amorphous qualities of affect; its resistance to totalizing definition that result from its capacity for circulation and its diffuseness, and the ways in which it is difficult to locate or pin down in simple subjective/objective terms (Ngai 2005, 30). In other words, as Ngai argues, affect is not easily reducible to a subjective response or an objective property, but instead circulates between these two poles, slipping “in and out of subjective boundaries” (31). As a result, accounts of affect tend to evade precision or systematic, positivist modes of analysis (30). Yet I concur with Ngai, among others, who argue that methodological tactics can nonetheless be explored and experimented with that not only make analysis of

affective processes possible, but also compelling and significant (Massumi 2002, 260; Ngai 2005, 26).

Consequently, my approach to methodology does not seek out a fixed set of procedures and rules to follow (in the “stir and mix” sense), but inscribes itself in those approaches that take methodology as an *art de faire*; a practice of experimentation with and reflection upon our *manière de faire* and its connection with the knowledge it produces (de Certeau 1984). In this and the following chapter, I will expand upon and unfold this methodology by proposing and elaborating upon a series of facets that inform the affective and discursive dimensions of news events in ways that help us to account for the lines of governmental force they produce. In this chapter, I propose to explore five facets of the affective dimensions of news media events, each of which offers a methodological point of entry into the analysis of the news affects that came to have a bearing on the governmental outcomes of the Fujianese boat landings in 1999. These include what I propose to call *mediaphemes* as key traces and generators of affect in news events; the *amplification spiral* of a news event, the momentum it has, the *affective spiral* it produces, and the *lines of flight* it generates (Deleuze 1986). In Chapter 3, I turn to the discursive dimensions of news events that have a much more developed set of methodological precedents.

My impetus in arranging the coming two chapters along these lines relates to my larger overall *démarche* which draws on without explicitly or intensively thematizing the notion of the *assemblage* (or *dispositif*) as a methodological approach. More specifically, the two chapters offer an account of the *assemblage* of *affects*, *discourses*, and *corporealities* that converged and were produced through the news event around the “Summer of the Boats,” and that shaped the governmental policy measures that were put into place in its



wake. Throughout these two chapters, I consider the imbrication of the affects and discourses generated by and through this event in the corporeal materialities at stake. The most apparent and stark being the bodies of the Fujianese migrants that sailed into the waters of British Columbia that summer, many of whom ended up detained (a form of bodily caging that was presented as protection), some of whom went on hunger strikes (a bodily practice of protest), and most of whom were deported (the ultimate act of bodily expulsion from the nation as social body).

While I do not thematize it as a central concept or method, this approach to the assemblage nevertheless informs and remains a critical conceptual backdrop orienting the methodological strategies taken up in the coming pages. It enables us to consider the forceful yet complex articulations between affects, bodies, and discourses, as well as among racialized, gendered, economic and national formations effective in the mediatization and eventual governmental outcomes of the Summer of the Boats. Yet it does so without imposing an overly deterministic or closed account that would reduce the unfolding of the event to any one factor (whether economics, race, the media, CIC, etc.). Furthermore, as Jasbir Puar (2005) argues, “assemblages allow us to attune to intensities, emotions, energies, affectivities, textures as they inhabit events, spatiality and corporealities...Assemblage, in...its espousal of what cannot be known, seen or heard, or has yet to be known, seen, or heard, allows for becoming/s beyond being/s” (128). Such an approach is central to this project insofar as it not only allows us to account for affective intensities as critical to the unfolding and overwhelmingly repressive outcome of this particular event but also allows us to consider new trajectories generated alongside pre-existing lines of tendential force (the “becomings” that Puar speaks of), as well as unfolding routes of potential escape (the lines of flight). As an articulation of material and

non-material, actual and virtual, discursive and non-discursive elements (Allor and Gagnon 1997, 33), the assemblage is valuable as an approach that steers a methodological course “...entre, d’une part, une approche totalisant mettant en avant l’idée d’une structure, d’un ordre homogène, et, d’autre part, une approche rhizomatique, mettant en évidence une fluence généralisée...” (Peeters et Charlier 1999, 15).<sup>1</sup>

A key aim of this chapter then, is to offer an account of how the affective dimensions of the media spectacle around the Fujianese boat landings in 1999 were crucial to the exceptional and racialized governmental outcomes that were ultimately enacted by CIC. In the process, I will also elaborate a methodological approach for analyzing affect (and its effects) in news events, as part of a larger examination of the assemblages of affects, discourses and corporealities that produce particular governmental outcomes through the circuits and circulation of news in the mediascape. Thirdly, I develop the notion of the *mediapheme* as a key conceptual and methodological tool to trace the work of news affects. My conceptual elaboration of the mediapheme aims to offer a contribution to recent embodied approaches in media and cultural studies that foreground the sensory, material dimensions of communication as part of a departure from more traditional theories of representation and signification (Marks 2000; Terranova 2004a).

In the coming section, it is also important to note several matters regarding my approach to the news media event in the summer of 1999. For each section in the upcoming two chapters, I alternate between an initial, more theoretically oriented

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<sup>1</sup> Translation: “between, on the one hand, a totalizing approach foregrounding the idea of a structure, a homogenous order, and, on the other hand, a rhizomatic approach foregrounding a generalized flux.”

reflection on my conceptualization of that particular affective or discursive facet of the event, and a more imbricated, concrete account of how that facet unfolded with respect to the events of the 1999 boat landings. Throughout the two chapters I rely a good deal on ethnographic research conducted by Alison Mountz (with CIC officials) and Sorcha McGinnis (with journalists covering the event), because the interviews they conducted, based on governmental and media access unavailable to me,<sup>2</sup> quite effectively capture details of some of the affective qualities of the summer's events in relation to governmental and media practices.

One of the methodological conundrums and contradictions I have faced regarding my insistence on news media events as ambient, spatialized and cross-media happenings is the challenge of conducting a retrospective analysis of these events that relies on their documentary and archival traces. Specifically, in a Canadian context, this means relying on print media archives and databases, as institutional and commercial resources are allocated to the archiving of print media over public television or radio archives (unlike national contexts such as France that do house public broadcast archives). For the sake of manageability, I have limited the corpus of print media I included in my analysis to English language corporate media that spanned both local British Columbian and the national English language mediascape. The account in the coming two chapters is based on an overview of print media coverage of the Fujian Chinese migrant boat

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<sup>2</sup> In fact, in her dissertation, Mountz (2003) details that while she was initially granted access to Citizenship and Immigration Canada workers to conduct her ethnographic research based on her affiliation with the Metropolis Project (a CIC and Social Science and Humanities Research Council joint academic-governmental venture), her research created enough concern among some CIC officials that her access was eventually withdrawn and she had to halt her research. This raises important questions regarding matters of power and access to conduct institutional ethnographies, and the degree to which access to such institutional settings through such ventures depends on the perception of congruence and conformity with the political and governmental prerogatives of the institutions in question (in contrast to the more contestational tradition of institutional ethnography developed in the work of such scholars as Dorothy Smith (1987) and Roxana Ng (1988)).

landings, starting with the first boat's arrival in July of 1999 and closing with the deportations a year later in 2000.<sup>3</sup> Throughout these pages, I approach these print media texts as active traces of a larger news event rather than a closed, reified discursive corpus, treating them as textual and visual remainders that will be mobilized to account for the ephemeral and ambient nature of news media events and their affective intensities (McCarthy 2001).

## **2 GO HOME!!!! Accounting for News Affects / Ambient News**

### **2.1 What's the buzz? Mediaphemes and the Sensing of the News**

Given the intimate connections between affect and the senses, one of the most immediate ways to begin to account for the affective dimensions of a particular news event is to consider the sensory elements that come to constitute and stand in for the event. A key set of methodological questions can be raised here as points of departure: What are the key sensory moments and modes that are selected and circulated to propel the event into the mediascape? What kinds of affective tonalities and resonances do they evoke? The circulation and diffusion of a news media event into the mediascape is carried by certain key images, sounds, phrases, and figures that come to encapsulate the event in public culture. The image of a ghost ship advancing, the sounds of an Arabic voice on a tape attributed to Osama Bin Laden, the planting of the American flag on the moon's surface, the image of a brain-damaged woman (Terry Schiavo) responding to clapping hands...such key sensory units are selected, seized upon, condensed. They are dramatized and amplified through a process of journalistic selection and mass media

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<sup>3</sup> Two newspaper databases in particular were used to gather the corpus of newspaper articles printed on this subject between July 1999–2000: *Canadian Newsstand*, and *The Globe and Mail's* full text database.

hyper-circulation and -diffusion. As they circulate into overdrive, they collect and elicit a set of affective charges and valences that propel the event both temporally and in terms of its circulation through the mediascape. For the more momentous and lasting of such events, these key images/phrases/sounds become central to the historical and cultural memory of an event, shaping what Paige Baty calls iconographic memory and public forms of collective remembrance tied to their temporal and affective density (Baty 1995, 59). A few instances from 1960s Americana that have become so common as to be cliché: the film footage of the Kennedy assassination (the Zapruder film), the phrase “the Eagle has landed”, the image of the raised fist of the Black Panthers on the podium at the Olympic Games in 1968. Yet even when they don’t attain such iconic status in historical memory, these sensory fragments come to condense the affective resonances of an event that emanate from them and, in many cases, come to stand in for and encapsulate the event itself.

I call these sensory units *mediaphemes* (or *phemes* for short), and foreground them as a key point of conceptual and methodological departure in tracing the affective dimensions of news events. At this point, I want to ground my approach to the mediapheme and to contextualize it in larger debates around the work of affect. Part of my motivation in mobilizing this notion is to challenge and broaden the theoretical weight that images tend to carry in media theories about news events and media spectacles. I want to insist that mediaphemes are not limited to visual images; they encompass sound bites, buzz phrases and other sensory units that operate in a multisensory and even synaesthetic manner (Marks 2000).

My elaboration of this approach to the mediapheme situates itself in the trajectory of recent critiques of representation as the locus of theoretical attention in much of the

work of cultural studies over the last thirty years (Marks 2000; Terranova 2004a). These critiques point out the limitations of traditional theories of representation as pure semiotics or signification. They elaborate an embodied approach to communication based on a cultural materialist understanding of the place of the body in communicative practices, and an insistence on the sensory, material dimensions of what has tended to be consigned to the realm of disembodied, immaterial signification. Whereas what Terranova calls the neo-Saussurean social constructionism that has predominated in much cultural analysis “cannot help but reproduce...the semiotic gap between meaning and reality”, the renewed cultural materialism of such approaches considers how “communication ...[comes] to imply a material potential for transformation” specifically by accounting for the material,<sup>4</sup> embodied dimensions of communicative events (62, 70).

Building upon such approaches, I also want to challenge recent theorizations of affect that posit what I would argue to be too wide of a gap between affect and language (or discourse) as absolutely autonomous or disjunctive modes (Massumi 2002). Such approaches tend to argue that while language and discourse function at the level of signification, cognition, or information, affect operates through a more immediate, sensory, embodied mode that evades capture in language, and to which language only responds retrospectively (Massumi 2002, 24-26). In advancing this notion of the mediapheme, I want to contest the strict divide between language and affect by offering an account of the affective work that language, particularly *news speak*, does when mobilized in a media event. In other words, while many have argued that discourse is not

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<sup>4</sup> In speaking of materialism and the material here, I do so in the tradition of Raymond Williams’ cultural materialist project that rejects and reformulates the classical base/superstructure model of economic Marxism (Williams 1980, 31-49). Specifically, I am drawing on “an understanding of material processes as non-deterministic and non-reductionistic” (Terranova 2004a, 66); an expanded materialism that encompasses the virtual, incorporeal dimensions of matter and material objects (Massumi 2002, 4-5).

reducible to language (Foucault 1971; Derrida 1967), I want to argue that, by the same token, language is not only discourse, that the discursive is only one dimension of language as it is propelled in ambient media events. To elucidate on these other dimensions, the *phemic* and the *phatic* dimensions that I foreground as key to the affective work of language, I will make a brief detour into these concepts as they are treated by such philosophers of language as Austin, Jakobsen, and Malinowski, along with Paige Baty's suggestive formulation of the mediapheme.

While most of the theoretical uptake of J.L. Austin's speech act theory has recently focused on the performativity of illocutionary and perlocutionary acts (Butler 1997), Austin also proposed three dimensions of speech acts that he called phones, phemes, and rhemes (Austin 1975). While the phone corresponds to the sonic act of uttering certain sounds and noises, the pheme encompasses the sounds produced as they adhere to the grammatical conventions of a given language. Only at the level of the rheme do matters of meaning, sense and reference enter into play. While all rhemes are at the same time phones and phemes, and are difficult to disentangle, practically speaking, Austin's postulation of the pheme as a sound unit of language in a linguistic context apart from its sense and reference is significant for the way I want to argue that mediaphemes are propelled into circulation in ways that operate in a relatively autonomous (but never entirely independent) manner from the material referents they may index or the meanings they may signify.<sup>5</sup>

Just as phemes constitute the sound units of spoken language apart from its informational and referential functions, the phatic aspects of speech first proposed by

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<sup>5</sup> In this I depart from followers of Baudrillard, whose notion of the simulacra posits an irretrievable gulf between an image and its signification or referent. In so doing, he overstates the autonomy of the simulacra.

Malinowski and elaborated upon by Jakobsen refer to another key dimension of language use that operates apart from its informational, cognitive, or strictly discursive functions (Malinowski 1923). According to Jakobsen, phatic communication is the use of speech as a means of sociability, of being “in touch,” of affirming contact, rather than to communicate information or ideas (1960, 56). Whether it is talk about the weather or asking “How’s it going?” as a manner of greeting, phatic language is the use of speech or text to maintain and augment the possibility and the flow of communication. It is concerned with sustaining the process of communication rather than its substance, confirming that contact is taking place and reaffirming social connectedness. Contrary to most linguistic approaches that treat phatic communication as a trivial, banal form of exchange (as simple talk about the weather), I emphasize the necessarily affective and embodied nature of phatic exchanges. In phatic contact, affect circulates in everything from the tone of voice, bodily comportments, movements, gestures, and eye contact to the sense that someone is hearing us or bored or captivated by what we are saying.

Today’s live, highly networked media systems are, in this sense, also affective and phatic systems, fuelled by and feeding on our phatic desires, our need to feel plugged in and up to date with “what is happening.” The circulation and amplification of news events are fuelled by these phatic desires, to be “in the know” of the latest breaking news as it is happening, plugged into the popular buzz of “what’s goin’ on”, whether it is the latest terror suspect or Brad and Angelina, quite apart from the substance and overall signification of an event.

News affects are central to what Terranova (2004b) calls communications biopower. They emerge through the amplified circulation, not only of images as Terranova claims, but of the phemic and phatic dimensions of the language of new speak.



The sensory, phonic units that carry sound bites and buzzwords are a case in point. Their constant circulation and repetition in a given mediascape not only operate on a discursive level, but also on a sensory and affective one. The unit of sound that propels a particular sound bite or catchphrase (*commandites*, *Katrina*, *weapons of mass destruction*); the pitch and tone of distinctive voices coming from particular bodies and producing specific sounds (wailing, threats, rejoicing); the visual dimensions of language in the design, style, fonts; the “look” associated with a particular news outlet and the tone it conveys. Each of these instances mobilizes the affective dimensions of language in media events in some way. Particular news discourses, what Massumi characterizes as the retrospective discursive dimensions of language (Massumi 2002, 25), may coalesce around or emerge from these affective dimensions of language—in the catchiness of a particular sound bite, or through news affects that inform and propel particular or novel articulations of news discourses.

In this way, I would qualify Massumi’s claim that the skin is faster than the word by foregrounding the ways in which words (both spoken and textual), images, gestures, and sounds hit the surface of the skin and resonate off of it (including the surface membranes of our eyes, ears, vocal chords, and mouths) (Massumi 2002, 25). While my approach diverges from Judith Butler’s larger theoretical project with respect to what I consider to be an ultra-constructivist, overly discursive rendering of the body, her more recent (and seemingly more materialist) formulation regarding the embodied nature of the speech act is suggestive here (2004a, 172-173). In her essay “Bodily Confessions,” Butler characterizes speech as a bodily act, a “sounding forth of the body,” “a vocalization...[that] requires the larynx, the lungs, the lips, and the mouth” along with, I would add, the membrane of the eardrum, and the haptic sensing of sound vibrations (172). Similarly, I would underline the embodied nature of textual language forms, of the

situated and physical dimensions of reading and writing (as any writer who has had repetitive strain injury knows too well). Such an approach emphasizes these sensory and embodied dimensions of language. It does so as part of a refusal of theories of language or representation that posit an overly dichotomous gap between language and the body often rooted in a mind/body dualism, along with theories of representation that place signification in a separate realm from the everyday, material world of referents.

The broader notion of the mediapheme that I am mobilizing here, then, foregrounds these material, sensory, embodied dimensions of language by assembling Austin's characterization of the pHEME as an aural mode of speech, Malinowski and Jakobsen's focus on the phatic dimensions of language, and Paige Baty's formulation of the mediapheme. According to Baty, mediaphemes are "quick encapsulations", "stories, figures, identities...[that] to be transmissible...must first be compressed into units able to quickly circulate through the channels of mass mediation" (1995, 60). More specifically, I take mediaphemes to be the key sensory units, the fragments of visual and moving images, sounds, buzzwords and sound bites that come to encapsulate, stand for, and constitute the very modes of hyper-circulation of a news event. They are the currency of the news affects at play in any one media event, as compressed sensory fragments that are selected—packaged in fact—for accelerated dissemination through the mediascape.

The hyper-circulation and repetition simultaneously transform these sensory fragments into ambient mediaphemes that displace them from their initial context of sense and signification—in ways that can be neutralizing, enabling, or damaging. Mediaphemes operate affectively, not only at the level of discourse and signification. They produce ambient, floating affects that may then become rearticulated and reattached to those referents to which they maintain an indexicality, sometimes violently

so, at the same time that their hyper-circulation transforms the very milieu and habitus around those referents. It is never the same once a media frenzy touches back down on the stories and people that lie at the focal point of the storm, as we will see in the coming pages.

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“Sudden flood of Chinese boat people ignites anger in B.C.”

- [Headline], Joel Connelly, *Seattle Post-Intelligencer*, September 3, 1999.

“Smuggling ship 'filthy, decrepit': 122 Chinese sailed on 'horrible, abysmal' boat”

- [Headline], Sarah Papple, *The Province* (Vancouver, BC), July 22, 1999.

“Forces escort mystery ship headed for B.C.: 'Wasn't a cruise liner': Immigration officials suspect ship carrying illegal immigrants”

- [Headline], Chris Wattie, *National Post*, August 11, 1999.

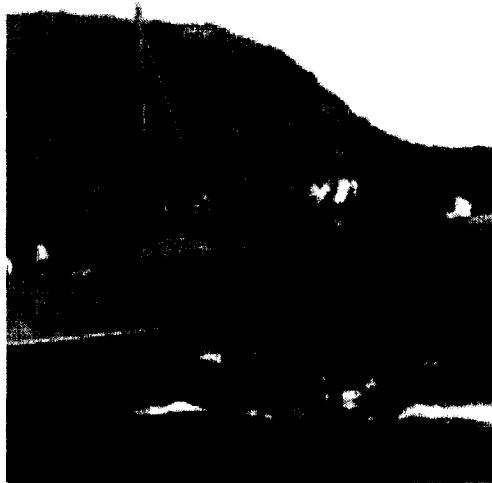


Figure 2.2: Paul Rudan/ *Campbell River Mirror*

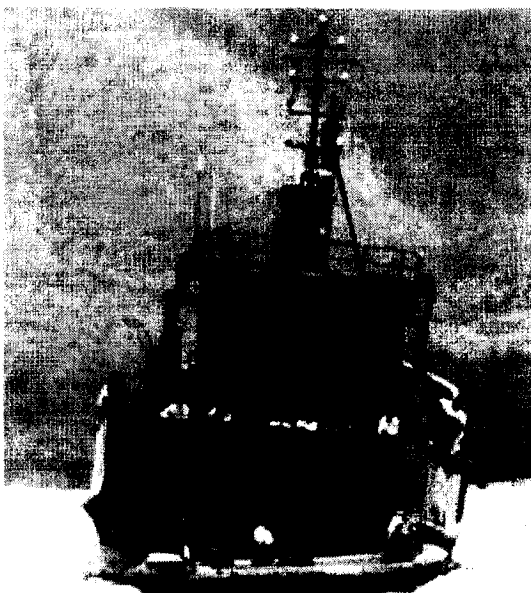


Figure 2.3: *CBC.CA*

Images of each ship's encroachment were diffused and dramatized from moment to moment in great detail in the news media. Idling, encroaching cargo ships stalking the high seas; disappearing, threatening to land. Phantom ships carrying portents of a menacing, mysterious threat. The continual repetition of key phrases and sound bites: "phantom ships," "ghost ships," "decrepit, rusty ships." The medium group close-ups of the migrants on the boat, enhancing the sense of crowding and invasion. The constant circulation and repetition of phrases associating the migrants with disease: "festering mess of excrement," "squalid," "quarantine." The images of CIC officers and police agents boarding the boats sporting surgical masks. The headlines screaming of ghost ships, illegals, snakeheads, floods of migrants pouring into the land. These were some of the key mediaphemes that reverberated through the mediascape in the days following each boat's arrival.



Figure 2.4: *CBC.CA*

Accompanying the visual phemes of the endlessly idling boats, the alacrity of the sound bites and buzz phrases that emerged around the arrivals circulated as aural units continually repeated in television and radio coverage, as well as colorful headlines and photo captions. Headlines are key mediaphemes that carry a news event—their visual style (font, size, layout) and display designed to convey an affective impact that grabs attention, provokes, and titillates. This is why headlines are so often described in colloquial terms as sensational, splashy, inflammatory, colorful, screaming. As compressed encapsulations that are designed to capture attention (“vending box hooks” as McGinnis calls them (6)), headlines evoke and propel key phrases or fragments of language into the mediascape. These often become the aural mediaphemes automatically associated with an event (“weapons of mass destruction”, “the eagle has landed”, “didn’t inhale”). During the Summer of the Boats, they ranged from: “Go Home,” “Enough Already,” to “Quarantined.”<sup>6</sup>

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<sup>6</sup> Cindy E. Harnett. “Go Home.” *Times Colonist* (Victoria, BC). August 15, 1999.  
*The Province* (Vancouver, BC). “Enough Already! It’s time to toughen the law.” September 1, 1999.  
*The Province* (Vancouver, BC). “Quarantined.” July 21, 1999.

In her detailed content analysis of the media coverage of the Fujianese boat landings, McGinnis notes that there was often a disjunction between the headlines and the copy of news articles, and that the sense or force that the headlines would convey often ran counter to the story recounted in the copy of the article. Often, the more significant contextual information (e.g. the economic and social factors contributing to the reasons many Fujianese migrants are on the move) that countered some of the more sensational or demonizing buzzwords (“illegals”, “queue-jumpers”) would be buried seven or eight paragraphs into a story. McGinnis also cites studies conducted by news organizations into the reading practices of their audiences that show that only 25 per cent of readers read a story after scanning the headline, and less than half of them read past the first few paragraphs (McGinnis 2001, 9). One reporter interviewed by McGinnis criticized some of the headlines that accompanied his own stories on the boat landings for *The Province*. “I have no control over them. The paper must come up with two-word headlines” (6). Along with the visual elements of the news, headlines play a key role in producing the phemes that propel a news event, and they do so by affective means in order to capture and maximize public attention.

If mediaphemes are the raw units that carry a news event, they are not naturally occurring. They go through many layers of negotiation, framing, and interpretation, and the struggles to package, regulate, and unleash the defining phemes in a news event is one of the key battles of different actors, from publicists and PR people, communications specialists, media activists and strategists, to journalists and editors. For all the layers of programming and regulation that occur in order to produce them however, they can never be completely controlled or governed, and there is often an element of

undecidability and chance with respect to how they are produced. Consider the story of Vancouver Sun reporter Jeff Lee, as recounted by McGinnis:

On August 11, Lee and photographer Ian Smith were the only journalists aboard a Canadian Forces Aurora patrol aircraft on a routine patrol mission when it intercepted the ship that unloaded 150 migrants on Kunghit Island in the Queen Charlotte Islands. The chance encounter was met with disapproval by the admiral at Canadian Forces Base Comox—"what the hell is a reporter doing aboard my plane," Lee recalls him saying. But for Smith, perched in Aurora's observation bubble, the opportunity resulted in the famed photo taken at more than 400 km/hour of 'dumped' migrants scrambling onto rocks. Lee could not believe his luck...When the Aurora finally landed, the ecstatic journalist pulled out his cell phone and told the newsroom the airspace over Kunghit Island was effectively closed—the Sun had the 'scoop' and the only photos of the high seas adventure. Adrenaline surging, Lee wrote the lengthy Aug 12 story on the return flight to Vancouver Harbour. (5)

The adrenaline surge referred to by Lee captures the visceral sensory and affective effects that a building media momentum can produce. The photo that resulted from all the manoeuvring by Lee and Smith produced a key visual pHEME of the migrants' arrival that was splashed across front pages. The race to produce the right visual or buzz phrase in the right moment of a media event is a major preoccupation in the news business, one that makes and breaks careers and that mobilizes considerable investments by news organizations (to send photo crews out on the open seas, for instance). The same sort of media hunt for the next big pHEME sent boatloads of journalists and photojournalists out to chase down "phantom ships" on the open seas that summer in tandem with the Coast Guard.

## **2.2 "This is just the beginning": The Momentum of Media Events**

As a news event is propelled into the mediascape and attains a certain density and level of circulation, a series of questions of a qualitative register emerge regarding its

duration and movement through the news cycle. What pacing and momentum does the news event gather over the course of its life in the news cycle? How does a news event move through time, and what is its place in the media flow? What is its moment of emergence or disruption, what are the points of intensification, contestation, reversal, and what happens for it to reach a point of closure, resolution, normalization? And significantly, what is the afterlife of the event beyond its circulation through established media channels? What happens once it subsides, deflates and falls out of the mediascape...the process journalists call “a fizzle”?

In some cases, a news event’s cycle is not linear. It disappears from news coverage, lies dormant, and reappears in the mediascape over the course of time. In other instances, one just knows “this is it”—a whopper of an event that is going to be everywhere, endlessly in your face for a while to come. One can almost palpably feel the media machine kick into gear, gathering itself for the coming feeding frenzy. Regardless of its magnitude, each news event has a specific momentum, occupying a greater or lesser place in the mediascape or flow of a particular moment in ways that cannot be completely predicted in advance.

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“Likely migrant ship nearing B.C.: New vessel ‘fits profile’”

- [Headline], Adrienne Tanner, *National Post*, September 9, 1999.

“Navy on alert for another mystery ship”

- [Headline], Jeff Lee and Chad Skelton, *Calgary Herald*, September 9, 1999.

“John recalled seeing the image of the first boat...He told me that he thought to himself, ‘This is just the beginning.’”

- Alison Mountz (2003), notes from an interview with a CIC official (142).



Images of the ships' encroachment upon "Canadian territory" were diffused and dramatized from moment to moment in great detail in the news media. The talk of phantom vessels, of ghost ships approaching, idling, waiting to descend on a defenseless coastline soon grew from the whisper of a few articles and news items to the chatter of repeated, daily headlines. The momentum of the news event set up a sense of intense anticipation, foreshadowing a deluge of invading vessels, particularly as new ships materialized. There was an abrupt transition from foreboding warnings of ghostly intruders to the sudden, vivid image-phemes of rusty, crowded cargo boats as the phantoms materialized, hunted and tracked by the coast guard and the media. The shift in momentum announced the boat arrivals as a shattering disruption, immediately precipitating a tone of alarm and a deluge of media coverage.

Once it was reported that many migrants amongst the first boatload of arrivals failed to show up for their refugee hearings, the tone and momentum of the event shifted again. The presumption made in much of the media was that the migrants had disappeared across the border into the United States, their true destination, with the help of traffickers who had smuggled them into Canada. This set off a massive outcry in the media and amongst the public. Soon after a second ship landed on August 9, media outlets such as the *Times Colonist* resorted to citing opinion poll results in their headlines (McGinnis 2001, 8-9), so that key headlines circulating in the media included:

"Go Home" (Cindy E. Harnett, *Times Colonist*, August 15, 1999.)

"Enough Already! It's time to toughen the law" (*The Province*, September 1, 1999.)

This constituted another crucial turning point in the momentum of the event, the point at which the interpellation of further governmental action became the most intense. Amidst the hue and cry about the laxness of immigration laws, CIC responded with

immediate preventative detention (the migrants were deemed as “flight risks”) and the institution of an extraordinary accelerated group processing procedure. The media spectacle soon shifted to widely circulated images of the Fujian detainees from the latest incoming ships being shuffled back and forth from their hearings in chains and prison overalls. Their association with criminality and illegality gained further momentum, creating the grounds for a renewed discourse on trafficking (see Chapter 3) that emerged over the course of the news event.

At certain points during the long months of the migrants’ detention, the media struggled to come up with new material to cover. As McGinnis notes (2001, 19), at these times, “reporters found it a real challenge to take the story in new directions. Journalists often resorted to reporting mundane events, as the following headlines attest:

“Boat people chow down” (Barbara McLintock, *The Province*, August 5, 1999.)  
 “Refugees take a ferry ride” (Jim Jamieson, *The Province*, August 10, 1999.)

These “slow moments” in the cycle of a news story (for journalists) is indicative of the power and momentum of the news event as a whole, since the imperative to cover the event when nothing new seems to be happening, to find a fresh angle or new direction, only holds for those stories that are “hot” enough and take up a large enough space in the mediascape to warrant such attention to mundane details. “Slow moments” occur when there is a gap between the momentum generated by the widespread circulation of initial mediaphemes and a lack of fresh ones, a gap in which new phemes must be sought out and circulated to sustain the momentum. They can be the outcome of a lack of new developments in an event (new developments being the driving force of media momentum), government stonewalling, a lack of photo opportunities (“photo ops”), or an

eventual lull in momentum. The ongoing production of new mediaphemes in a big story serves to shape and alter the momentum of an event.

Soon, hunger strikes (November 1999, July and October 2000) and protests (July 1999, April 2000) that broke out among the detained migrants offered new focal points of media coverage. As a form of protest that primarily impacts the body of the protester, hunger strikes are generally associated with pacifist tactics that are taken as a last resort of the caged, immobilized body. Yet the majority of headlines framed the protests as riots, as in a *Globe and Mail* headline that read “Smuggled Chinese revolt in BC” (Jane Armstrong and Kim Lunman, July 29, 1999). Elsewhere *The Globe and Mail* cited prison authorities as the main source on the hunger strikes at the Prince George Correctional Centre for Women, with a headline reading “Prisons say smugglers behind hunger strikes by migrants.”<sup>7</sup>

The ultimate deportation of the vast majority of the Fujianese migrants, including several mass deportations of groups of 90 migrants on chartered planes (May and July 2000), received renewed attention and offered a form of closure to the momentum of the news spectacle. As the story trickled off, sporadic news items would appear foreshadowing the arrival of new ships. The prospect of ghost ships perpetually idling, always threatening to reappear:

“More human-smuggling ships expected” –[Headline], Kim Lunman, *The Globe and Mail*, November 3, 1999.

“For months now, immigration officials and police have been preparing for the arrival of hundreds of Chinese boat people this summer...Immigration Canada has extended its lease on the gym at the Esquimalt naval base to use as a processing station...two marine response teams have been trained this year instead of one – just in case two boats arrive at

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<sup>7</sup> Rod Mickleburgh. “Prisons say smugglers behind hunger strikes by migrants.” *The Globe and Mail*. November 16, 1999.

the same time. The only thing missing is the boats. (Chad Skelton, “Boat people behind last year’s schedule.” *The Gazette* (Montréal, QC), July 18, 2000.)

CIC had predicted the arrival of eight to ten new ships in the summer of 2000 (Mountz 2003, 189). When the new ships failed to appear, the media eventually drifted away and the media event around the Summer of the Boats came to a close. A senior CIC official admitted in an interview with Mountz that he and other employees experienced a sense of anti-climax and disappointment as the anticipation of new boats went unfulfilled and the ghost ships failed to rematerialize.

Yet some resonant news media events have an afterlife, even when they seem to disappear from the media spotlight. Several of the key mediaphemes and discourses produced through the media event around the Summer of the Boats re-emerged in later news events regarding Canadian immigration, particularly after September 11, 2001 (as I will examine in Chapters 6 and 7). More than six years after the boat arrivals, in late October of 2005, a fresh round of attention was cast on new routes in the alleged smuggling of Chinese migrants. “East Coast becoming preferred illegal route into Canada” declared a CBC news headline (*CBC.CA*, October 31, 2005) which goes on to detail the entry of “Chinese nationals posing as tourists” on cruise ships who claim seasickness and disembark, never to be seen again.<sup>8</sup> The article attributes the masquerade of the disappearing tourist to the work of smugglers bringing the migrants into Canada on cruise ships from the European Union, now that the traditional West Coast route is more heavily policed. The article cites RCMP Sergeant Phil Young speaking of this “new trend”: “They’re not going to stop coming. It’s just a matter of us being proactive and

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<sup>8</sup> *CBC.CA*. “East Coast becoming preferred illegal route into Canada.” October 31, 2005. <http://www.cbc.ca/canada/story/2005/10/31/smuggling051031.html> (accessed November 2005).

trying to cut them off at the different sources that we believe they are coming from.” It would seem that even ghost ships have an afterlife.

## **2.2 *Larger than Life and a Life of its Own: The Amplification Spiral***

Accompanying its propulsion into the mediascape, I want to consider what I will call the *amplification spiral* of a news event as another significant element that informs the affective dimensions of the news. Here I am adapting and reworking the notion of the signification spiral in *Policing the Crisis* (which also refers to a process of *amplification*), defined by Hall et al. as “a self-amplifying sequence within the area of signification” of a news event (Hall et al. 1978, 223).<sup>9</sup> I see the signification or discursive dimensions of an event to be contingent on and reciprocally articulated with its amplification and circulation across various media spaces, creating a range of phenomenological effects and affective resonances. The amplification spiral encompasses the movement of a news event across a range of media forms, spaces, and outlets. It involves the take-up, circulation, contagion, escalation and dispersion of a news event across media; its amplitude, felt presence, and trajectory in the mediascape. The greater the circulation of the event, the greater its amplification in terms of its phenomenological dimensions, affective resonance and the proportional significance it is accorded in public culture and everyday life. The contagiousness of an event propels its amplification, how it does or does not circulate, intensify, resonate and diffuse into daily life. This is what is popularly referred to as a story becoming *hot*.

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<sup>9</sup> Hall et al. in turn adapt the notion of a “signification spiral” from the notion of an “amplification spiral” in sociologies of deviance, where a “reaction has the effect, under certain conditions, not of lessening but increasing deviance” (223). Needless to say, my mobilization of this notion is significantly different, as outlined in this section.

Most of us have experienced days where we walk out onto the street, and an event is everywhere—whether it be in photos of five Middle Eastern men with the words “suspected terrorists” (even if they later turn out not to be, as in January of 2004), or the latest death of a Trudeau or other “corps nationaux” (Clermont 2003). Everywhere we go, the event hits us in the face, at newsstands, in the metro, different media in domestic and work spaces: television, radio, internet...it soon suffuses daily conversations, it resonates and amplifies, we feel it all around us and “in the air” wherever we go; it follows us in daily life (even when we want to ignore and avoid it, pretend it isn’t happening). It makes its appearance in random encounters, its ambient presence felt everywhere, in stories and anecdotes, in the jokes people tell. In the most excessive cases, when the escalation is in overdrive and the buzz is everywhere, the pervasiveness and intensity of these ambient news events can leave you running for cover, overwhelmed by the force and intensity that such extreme media amplification generates.

When a story “takes off”, circulating to the point that it becomes an omnipresent, ambient news event, its amplification relies on and is carried by the mediaphemes that come to encapsulate it. The pervasiveness, contagion, intensity of such events, the power of media amplification can be indexed through the endless repetition and presence of these sensory bites, the way mediaphemes and their accompanying phrases, images, sounds themselves become airborne...suddenly, they are everywhere, hanging in the air, propelled through the ether of the mediascape. Decrepit boats, Clinton’s cigar, le vote ethnique, weapons of mass destruction. They circulate into everyday usage, people pick up on them quickly. Whoever wants to be ‘of the moment’ tunes their radar, cultivates a certain sensitivity to them. They become popular buzzwords, part of the phatic exchanges

that make up everyday life, infusing daily parlance in the way that advertising campaigns dream of attaining and capitalizing upon (“Where’s the beef?”).

I argued earlier that *media non-events* are also crucial elements in these biopolitical workings of the news media. Media amplification is key to the eventfulness of news, while media non-events are those events and stories that don’t get picked up or amplified for a range of reasons. In some instances, an event may challenge or embody elements that fall outside the conventions of legibility and visibility that news media workers are familiar with, so that it never gets picked up to begin with. At times, an event is not easily compressed into a set of mediaphemes, due to its lack of visual or sensory color, thereby failing to take off or circulate. In other cases, a story a journalist is seeking to transform into a news event gets “killed” through the institutional control and gatekeeping of editors or the political intervention of corporate interests or advertisers who perceive a threat to their interests. In the journalistic vernacular of North American news speak, this is known as the *buzzsaw*.<sup>10</sup>

If this ongoing traffic in mediaphemes constitutes the sensory supports through which an event is amplified or not (whether through their flow or blockage), our highly networked, complex news systems constitute the medium for this amplification. The most obvious instances are the wire services (Reuters, Associated Press, Agence France Presse, Canadian Press), 24 hour television news channels (RDI, Newsworld, CTVNewsNet, CNN, Fox), the cumulative effect of the range of front pages on view at newsstands, talk radio shows, and the continuous feed of online news portals and news or celebrity gossip blogs (Yahoo, the Drudge Report, and Perez Hilton in addition to traditional news sites

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<sup>10</sup> 2002 saw the publication of an entire anthology by journalists recounting their encounters with the “buzzsaw”—concerted corporate and/or government efforts to kill controversial stories”, entitled “Into the Buzzsaw” (Borjesson).

such as CNN or Radio-Canada). They compose the key nodes in these endlessly interconnecting phatic, buzzing networks, comprising the material and technical support through which larger mediascapes emerge. These nodes have the capacity to catapult the latest set of mediaphemes into overdrive.

Yet it is not only the wire services or news channels that operate this way. The wider network of corporate and public mass media function through these modes of contagious transmission, picking up on each others' stories and quoting each other, competing to have the latest on the big news event of the day. Consolidated media conglomerates cross-promote an event across different forms of media (as when versions of the same events appear on CTV television and in *The Globe and Mail*, both owned by CTVglobemedia). Once this amplification reaches a threshold, ricocheting an event through the mediascape, it becomes part of the phatic interchanges and circulation of everyday life, picked up and exchanged in everyday conversations, forwarded in mass e-mails, commented on across myriad blogs... "hey did you hear about..."? The highly phatic nature of news media networks are key to this amplification.

Another aspect of media amplification relates to what *Policing the Crisis* refers to as the *relations of reciprocity* that occur between different institutional and governmental sites and the news media—something that is closely tied to the governmental effects that news events have. Press conferences held by governmental and state bodies are often key sites where these relations of reciprocity play out, as are the obligatory quotations and news clips of interviews or press briefings with governmental officials. Reciprocally, the communications and PR departments of governmental and corporate bodies are another key manifestation. There is also an important governmental reciprocity between the security agencies of the state and the news media (which I examine further in Chapter 7).



As Hall et al. argue, these relations of reciprocity offer a privileged role to powerful institutional actors in the critical definitional work that the news media perform—in other words, in the ultimate problematization of a news event and how it becomes shaped. The governmentalization of an event is effected through the amplification that the news media mobilize, propelling key governmental mediaphemes through the mediascape (“For me, pepper is something I put on my plate.” “You are either with us, or with the terrorists”).<sup>11</sup>

The effects and pressures such amplifications elicit can be vivid and materially felt, as in the case of the Fujianese boat landings, creating momentum and pressure for political and institutional responses. Yet the theorization of these relations of reciprocity in *Policing the Crisis* remains trapped in some of the shortcomings of economistic variants of classical Marxist ideological analysis. From such a perspective, such relations tend to be understood in terms of a base/superstructure model where governmental institutions such as the police and judiciary are considered the primary definers, while the news media play the role of secondary definers (Hall et al. 1978, 57-60, 74-75). This can be the case in certain instances, but is not preordained or predetermined in advance. If anything, the overdeterminations of current complex media systems tend towards an inversion of this classical formula of primary and secondary definers, as captured in the popular rendering of the news media as the tail wagging the dog in such Hollywood films as *Wag the Dog* (Levinson 1997). In the case of the immigration department’s response to the media spectacle around the Fujianese boat landings, it is less clear who the primary and secondary definers were. In this sense, despite limitations that I discuss below, a Foucauldian notion of governmentality is more productive in accounting for the mutually informing governmental relations between the news media and other institutional sites.

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<sup>11</sup> Notorious sound bite phemes pronounced by Jean Chretien and George Bush, respectively.

The news media constitute powerful sites of governmentality in their own right, more so than secondary definers.

Another reason that an overly closed economic or propagandistic rendering of the governmental relations between the state and the media is unhelpful here is the unpredictable and non-linear nature of the amplification spiral of news events in contemporary media systems. Terranova captures these irreducible, unpredictable dimensions of news media events well in arguing that the non-linear nature of media amplification is closely tied to its affective power:

The strategy of amplification, the attempt to control the scene of communication by sheer power, by seizing control and monopolizing the infosphere, might backfire because information managers do not sufficiently take into account the nonlinear powers of feedback or retroaction—cynicism and anger, the diversification of communication niches, or just a kind of social entropy that nonlinearizes the transmission of messages as such. Nonlinearity here implies a kind of nonproportionality or differential between input and output, a tendency of systems subjected to amplification to produce deviations and distortions that are not primarily of the order of meaning but that involve the power of biophysical processes of affection. (Terranova 2004a, 60)

In other words, while governmental and institutional agencies do seek to control and shape them (the essence of media spin), the effects of media amplification are too complex to be guaranteed or predicted in advance, due in part to their affective, non-linear nature.

The everyday vernacular newspeak of media workers is evocative here. News workers call a news item that promises to build into a major news event but then fails to fulfill its initial buzz *a fizzle*. A fizzle is a news event that fails to amplify or circulate. Anyone who has done any kind of media work is familiar with that sense of disappointment that sets in when an issue or event that you are working to make into a major media event fails to take off or materialize on the horizon of the mediascape, fails to capture media attention or make a dent, ending up only as a blip in the media noise.

Both institutions and activists contesting their policies engage in “media work” and media relations in seeking to expand the shape and space particular news events take in the mediascape, by creating events and counter-events that seek to strategically mobilize the attention and focus of those nodes in the news media that have the capacity to propel and amplify an event into the mediascape. The construction, control, and circulation of mediaphemes are a matter of contestation and struggle among different actors across a range of governmental and non-institutional sites. The effective staging and shaping of a news event through the media work performed by everyone from activists to institutional spokespeople seeks to trigger the kind of amplification/affective spiral that can generate political, social and governmental effects. This process crucially shapes what gets called “public pressure”, “public opinion”, and the ultimate problematization and governmentalization of the event (as will be further taken up in Chapter 3.2).

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“Much of the crisis in the news unfolded as a ‘moral panic’ in which the events of the boat arrivals took on a life of their own, and hence became a phenomenon.”

--Mountz (2003, 256).

I have already offered a critique and reformulation of the moral panic approach to such events. What is significant in this citation for our purposes is the characterization of the crisis in the news as *taking on a life of its own* and becoming a “*phenomenon*.” The sense of autonomous activation, the buzz and clamor of an event circulating beyond the programmed control of one localizable actor encapsulated in the phrase “*taking on a life of its own*” is tied to the large scale media amplification of the boat arrivals.

The amplification of a media event has both qualitative and quantitative manifestations. Mountz and Mahtani found what they (tellingly) call a “*roar*” in media coverage around questions of immigration in 1999 compared to the previous five years—a direct result of the Summer of the Boats. Print media coverage of immigration stories in British Columbian newspapers in 1999 nearly doubled from the previous year, and increased four-fold from 1995 (Mountz and Mahtani 2002, 17), while CIC made the front page 80 times in 1999 (Charlton et al. 2002, 5).<sup>12</sup> My own examination of national English-language press coverage confirms these findings, with print coverage almost doubling between 1998 and 1999.<sup>13</sup> Drawing on such traditional content analysis methods as word counts, McGinnis found that newspapers ranging from the national *Globe and Mail* to the local *Province* made ample and consistent use of such terms as “illegals”, “human cargo”, “aliens” and “snakeheads” to frame the boat landings (McGinnis 2001, 4).<sup>14</sup> The amplification of these terms transformed them into the key sound bite phemes associated with the event.

On a more qualitative level, the media’s amplification of the boat landings and the spiraling circulation of this news event served to create a distinct and dramatic atmosphere in the mediascape, a climate of siege and hyperbolic alacrity that had direct and immediate governmental effects. The affective dimensions of this amplification, the pressures and climate it created for bureaucrats and workers in the government agency that became the focal point of the amplification spiral, Citizenship and Immigration

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<sup>12</sup> According to Mountz and Mahtani, *The Province* and *Vancouver Sun* published 123 stories on immigration in 1995; 257 in 1998; and 471 in 1999 (based on a key word search in the Infomart database).

<sup>13</sup> Based on a simple keyword search on the Canadian News Stand database (4320 mentioning ‘immigration’ in 1998; 7907 in 1999; 309 headlines mention the word ‘immigration’ in 1998; 507 in 1999).

<sup>14</sup> For details on the variation in word choice among specific dailies, see McGinnis (4-8). Interestingly enough, McGinnis notes that the “respectable” national dailies such as *The Globe and Mail* were more prone to use terms such as “illegal” and “human cargo” to describe the migrants than local tabloid-style papers such as the *Sun* and *The Province* (4).

Canada (CIC), are clearly and vividly captured in the interviews that Mountz conducted. Because of the media pressure, the Communications Branch of the CIC was overwhelmed by the imperative to respond to and attempt to proactively manage the media crisis. As one manager interviewed by Mountz put it, “it’s not an option to be silent” (Mountz 2003, 259). CIC workers spoke of the extreme pressure and scrutiny they were placed under in highly visceral and embodied terms, as Mountz found, often groaning and rolling their eyes when asked of the media’s role in the affair. Many spoke of feeling trapped in a fishbowl, conveying the sense of extreme scrutiny and surveillance they felt subjected to by the news media. CIC employees also talked of feeling “beaten up” by the media (189), of not being allowed to make a mistake (147). As one of Mountz’s interviewees viscerally put it: “We couldn’t get out in front of the cameras fast enough. As soon as another issue came up, we were arranging to get in front of the cameras again. They were all slobbering. They wanted us. They could smell blood” (151). This sense of being hunted and tracked, of not being able to respond quickly enough, of the media’s baying for blood, evocatively captures the affective pressures created by the amplification of the event and the focalization of the eye of the storm on the Immigration Department.

The amplification of the Fujian boat landings and the media climate this created strongly affected the everyday practices of the CIC bureaucracy throughout the event. Mountz shows that the government response became completely oriented towards the media, and much of the department’s energy and labour was taken up by the directives and oversight of the Communications Branch of CIC. This meant everything from daily press conferences to entire workdays taken over by the task of monitoring and responding to the media, to careful planning and strategizing around a communication response (see further elaboration in Chapter 3.2). The crisis from the point of view of CIC workers

became a media crisis, much more so than a question of simply responding to the boat landings and processing the Fujianese migrants.

One of my aims throughout these pages is to challenge the continual political invocation of crisis, which tends to be taken at face value, foregrounding instead the political and governmental production of crisis. The degree to which CIC workers attributed and responded to the Summer of the Boats as a media crisis is significant here. The crisis they described was attributed less to the logistical issues or political/ethical dilemmas posed in processing the migrants and predominantly to the intensity of the pressure CIC experienced from the media, the so-called fishbowl effect. This indicates the extent to which the governmental response was oriented to the public image of CIC in the media rather than any purported welfare of the migrants.

At the same time, the susceptibility and over-responsiveness of the government to the media storm also indicates the extent to which this crisis mode of governmentality has become the *modus operandi* of contemporary politics. Crisis becomes the means to incite political and governmental shifts, along with new and renewed problematizations that lead to an intensified politics of closure in the field of immigration in particular. This crisis mode becomes the means through which media and political attention are mobilized and distributed—something that is as much the case on the left as on the right (though it tends to be the right that most often gains from this deployment of crisis politics). The news media are central in the enactment of this crisis mode of governmentality, as they form the matrix for the very constitution and production of social perceptions of crisis. The affective and amplification spirals enacted in news media events focalize political pressures and intensities on their targets to powerful governmental effects, indexed in part

by the packs of journalists and media scrums that descend on the focal site of a news event when it breaks.

Just as the CIC and other federal departments of the government were forced to negotiate for power and ‘public opinion’ through the media (Mountz 2003, 153), it was also clear that the news media were strategically engaged by many other actors in attempts to capitalize on the amplification of the event in order to exert pressure on CIC. They ranged from anti-immigration groups, right-wing commentators such as Diane Francis, angry or “concerned citizens”, to grassroots activists and lawyers for the migrants themselves. This was soon followed by organized political calls by the right wing (Canadian Alliance<sup>15</sup>) to reconvene Canadian parliament and “toughen” refugee policies.<sup>16</sup> In this sense, governmentality in relationship to the state, particularly around matters of immigration policy, is often negotiated through the news media. The news media thereby act as powerful sites of governmentality themselves, based precisely on their powers of amplification and the effective pressures they can exert with respect to the conduct and formulation of state policies.

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<sup>15</sup> The political successor to the Reform Party of Canada, the Canadian Alliance merged with the Progressive Conservative Party of Canada in 2003 to form the Conservative Party of Canada.

<sup>16</sup> Matas, Robert and Kim Lunman. “Migrants rescued from rusty ship: Reform party demands parliament be recalled to debate refugee policy.” *The Globe and Mail*. September 1, 1999.



## Migrants rescued from rusty ship

Reform Party demands Parliament be recalled to debate refugee policy; Caplan says there's no rush

**CHINA'S NATIONAL NEWSPAPER** • FOUNDED 1844 • WEDNESDAY, SEPTEMBER 1, 1999

about 80 migrants, rescued from a rusty ship off Vancouver Island after 72 days at sea, huddled on HNC's Algonquin yesterday.

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Figure 2.5: Mike Blake/ *The Globe and Mail*, September 1, 1999

Another crucial dimension of the amplification of the boat landings concerns the extent to which the hyper-circulation of the event through the mediascape amplified the perception of the scale of the event to proportions that far exceeded its numerical significance. The *mise-en-scène* facilitated by the visibility of the mode of arrival of the migrants—in large groups on the constantly emphasized rusty and decrepit boats—allowed for a spectacular dramatization of incoming ocean threats that is specific to marine landings. The extent of the event's amplification becomes clear when we consider the fact that many more non-nationals arrive at Canadian airports on a daily basis than did so in the cumulative waves of the four boat landings over the course of six weeks. The boat landings were minor in terms of numbers but, with a mode of arrival that lent itself to easy dramatization and amplification, were much more mediagenic, as exemplified in their “phemification” by such photojournalists as Lee and others. As one of Mountz’s interviews put it, “I’ve been working with refugees for years at border points and inland. They’re coming in every day at our airports, way more than this, and we’re



not locking 'em up. So it pisses me off a little bit that we are doing all of this just because of media and [public] perception” (153). Even many immigration officials acknowledged the link between the media spectacle, the governmental crisis they experienced, and the exceptional and repressive policy response introduced to manage the crisis.

### **2.3 ENOUGH ALREADY!: The Affective Spiral**

Accompanying the rhythms and intensities of the amplification spiral, news events elicit and produce an array of affective resonances as they travel through the mediascape. In the more highly pitched of events, this sets off an affective spiral (to once again reformulate *Policing the Crisis*' signification spiral in less signifying terms). This is an implicit and crucial but untheorized element throughout *Policing the Crisis*. To cite just two instances, Hall et al. define the signification spiral as the means through which “an increasingly amplified threat to general society” is imputed to marginalized or subcultural groups, and through which “the activity or event with which the signification deals is escalated – made to seem more threatening” (Hall 1978, 222-223).

I have already critiqued the limitations of the notion of panic through which Hall et al. frame their case, yet the undeveloped but persistent references to threat as an affective force are significant here. Different news events produce a range of affective resonances (not only amplified threats), circulating particular tonalities, scales and pitches: from Bush's pretzel to the Washington sniper to JLo or Bennifer, from the Stanley Cup playoffs, to the funerals of Canadian soldiers killed by “friendly fire” in Afghanistan. This is not to say that any given event will trigger affective resonances that are uniform or preconstituted. The ultimate emotional responses and interpretations they may provoke

are diverse, complex, and differentiated. Particular responses will vary, and public responses themselves become a site of manoeuvre in the attempt to govern affective spirals and the amplification effects they can unleash. Teresa Brennan suggests that the transmission of affect, *affective contagion*, operates through the embodied absorption of affective currents that may elicit different responses but that share a common moment of perceptual and sensory intake...a distinct feeling or vibe in the air (Brennan 2004). To put it another way, the affective spiral unleashed in a spectacular news event carries an intensity of affects that are (to paraphrase Terranova (2004b, 154)) common but not homogenous, subject to a range of different reactions and effects. In some cases, attempts to govern or deploy a specific kind of affective spiral are diverted, reversed or backfire, producing counter-spectacles that politicians, the media, and other governmental or control agencies don't anticipate. These affective resonances are never predetermined. They play out in the moment of the event in ways that various agencies, from politicians to advocacy groups to media workers themselves, may try to program, but that can never be guaranteed in advance.

While there are many political economic and institutional factors that contribute to the scale and capacity for amplification the contemporary news media have, the driving force behind the amplification of particular media events in specific moments, the pickup they receive and the routes they travel through mediascapes, is a highly affective process. The contagiousness of affect, its qualities of intensification, transmission and circulation among bodies and across media, is tied to its inherent capacities of amplification. Silvan Tomkins considered affect to be an "analog amplifier": "The affect amplifies by increasing the urgency of anything with which it is co-assembled...in its urgency [affect] is insistent" (1995, 53, 52). Sianne Ngai notes that Tomkin's theory of

affective amplification centers on the unique capacity of affect to amplify the awareness and effects of non-affective functions with which it co-assembles, through its capacity for simulation of them (2005, 53). The resulting intensification in tone and pitch produces an “amplifying analog” that focuses and captures our immediate attention. As Ngai puts it, “affect thus makes things matter” (53).

News affects are produced through circulation of the mediaphemes that constitute a news event. Reciprocally, the affects produced feed the circulation and contagion of phemes. Phemes, as images, sounds, words in movement and circulation, carry, pick up, and generate affect. At the same time, the release and transmission of phemes into phatic media systems, media that is as much about being hooked in and sharing in the flow of actuality as it is informational, is fuelled by the affective resonances of those phemes.

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“ENOUGH ALREADY” – *The Province*, September 1, 1999 (A1)  
 “Public Rage takes aim at refugees” – Daniel Girard, *Toronto Star*, July 30, 1999 (page 1)  
 “Refugee laws make Canada vulnerable” – *Vancouver Sun*, August 12, 1999 (A18)  
 “Victoria Chinese want migrants out” – Sandra McCulloch, *Times Colonist*, August 7, 1999 (A1)  
 “Chinese gangs flood Canada with lucrative human cargo” – Peter Cheney and Miro Cernetig, *The Globe and Mail*, February 2, 1999 (A1)

In a major news event such as the Summer of the Boats, the hyper-circulation of phemes through a mediascape of national scale—from images of the boats’ landing, the migrants in chains and prison garb, to the key buzzword/phemes (“ghost ships”, “human cargo”, “snakeheads”) and the way they were mobilized and produced through sensational headlines travelling through the mediascape—all helped to produce a highly affective atmosphere around the event. A climate of urgency, the need to do something immediately, captured the attention of the nation. It “struck a nerve”, according to one CIC official, “...the whole country was feeling it” (Mountz 2003, 162-162).



images of an angry, fed up Canadian public who had had enough. The perception was that of a nation wronged. Benevolent, naïve, overly generous and tolerant Canada was being played for a patsy, being taken advantage of by unscrupulous, sneaky, criminal forces. And this, most emphatically, had to stop NOW!

The escalation in the affective climate clearly shaped news media reporting practices. As McGinnis notes, despite the attempts of various news organizations to institute self-governance and rules about language use as the story unfolded (avoiding derogatory terms, for instance), six key terms were consistently used by a range of media outlets to characterize the migrants: *aliens*, *boat people*, *human cargo*, *illegal migrants*, *illegals* and *snakeheads* (McGinnis 2001, 7, 11). These were generally employed in the context of what she characterizes as “emotive photography” and “incendiary headlines that incited emotion” (23, 15). When one journalist who reported on the story, Phillip Jang, was questioned about this use of language, he responded that it was more of an attempt to be “colorful...I doubt very much there was any conscious effort to try and use language to build public opinion for example, I don’t think that was part of the agenda” (14). Whether or not we take his statement at face value, Jang’s references to attempts to be colorful and the lack of a conscious agenda on the part of the media can be better understood in the context of an escalating affective climate to which journalists both responded and contributed on a level that did not need to be conscious to be effective.

Perhaps most significant politically and in terms of governmental effects, such an affective spiral and its amplifying power generated a hyberbolic, “over the top” climate that created a context where actions and language that wouldn’t be permissible or possible as a matter of course in the regulated, ‘polite’ framework of Canadian public

space<sup>17</sup> become not only permissible but part of an escalating sequence. Such moments open up spaces of exception (Agamben 2003), that have the power to provoke policy vacuums, explicitly racialized responses, and new, “exceptional” governmental measures. While I offer a closer consideration of Agamben’s approach to biopolitics in Chapter 3, his claims regarding the crucial role of states of exception in liberal democracies are relevant here. These are in fact “exceptions” that prove the rule, demarcating and reinforcing the logic of liberal governmental rule (9, 54-55). This is particularly so for “crisis” news media events, which I have argued have become one of the operative means through which the contemporary news media organizes itself.

Another key feature of affect in such spiraling moments concerns the work it performs as an associative, assembling, articulating factor between and among mediaphemes, along with discursive elements that may or may not have any link to one another outside the momentum of a news event. As Ngai notes, Tomkins described this as affect’s “very great combinational flexibility...[as a] co-assembler,” which he saw as the basis of affective amplification. Ngai argues that the co-assemblages (or what might also be understood as articulations) that affect produces draw their effectiveness precisely from the capacity to combine dissimilar elements that do not have an “exact match or correspondence” (Ngai 2005, 55). She argues that this loose play of affect is based on a principle of inexactness that operates through “loose fits.”

Whether or not those articulations map onto actualities and materialities on the ground, the loose fits between such heterogenous elements as “Chinese migration”, “queue-jumpers”, and “criminal trafficking” become affectively sutured and forged in

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<sup>17</sup> This would apply more to Anglo-Canadian cultural contexts, where more Anglo-Saxon-inflected norms of politeness tend to shape the codes of decorum in the dominant public culture.

particular places and times through specific media events in ways, of course, that are often highly racialized.<sup>18</sup> The amplification of images and sound bites over the course of a media event, the ambient circulation and immersive presence of particular assemblages of phemes, can produce new or renewed affective associations and articulations (snakehead-trafficking, or bogus-asylum seeker). In the wake of such events—when they are fresh in the embodied associations and memories of those inhabiting that mediascape—to evoke one element of the assemblage (“Saddam Hussein,” for instance) will immediately evoke its co-assembled element (“weapons of mass destruction”) based on the force of the affective spiral of the news event that has associated them, whether or not any actual relationship exists outside its production through the event. And regardless of whether any one person rejects it or believes the link is real, the effects of its constant sensory associations are enough to evoke it. This was very much the case with the explosive spiral of outrage that was unleashed in the sensory bombardment and accelerated flow of phemes associating the Fujianese migrants with backdoor illegal queue-jumping and organized criminal syndicates (snakeheads).

It is here that affect operates as an important co-assembling element in racialized formations, in the eventful articulation of certain kinds of bodies with particular racialized and affective associations (such as the association of black male bodies and the “threat” of violence or crime). Affects do not just endlessly circulate. The spiraling of affective associations, the social circulation of affect, operates unevenly, impacting bodies differently. Affects become attached to certain, racialized bodies (and not others) through particular encounters and events. Sarah Ahmed (2004) writes of this racialized process of

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<sup>18</sup> Of course, often these events attain resonance by drawing on long-standing, sedimented cultural articulations tied to histories, habits, and practices of racialization that do not simply appear *sui generis*.

affective adhesion, how specific affective spirals (of fear, disgust) become attached to racially and ethnically marked bodies (89-100). And as Ahmed argues, it is here that an overly reductionistic rendering of affect via direct, unmediated sensation risks evacuating the place of memory, habit, and history in the embodied uptake of affect (40). Seigworth (1999) also emphasizes this close correlation between affect and involuntary memory. Often, events such as the Summer of the Boats attain density through their affective resonance with past associations, habits, embodied memories, and histories of racialization rooted in long-standing cultural articulations that do not simply appear *sui generis*. This was certainly the case with the Fujianese migrants that summer. The affective spiral touched off by the massive mediatization of their arrival was bolstered by and strongly resonated with earlier affective associations rooted in racialized historical anxieties about the “yellow peril.”<sup>19</sup> Yet at the same time, the affective trajectory of the news event produced new associations and assemblages that carried their own specificities and effects, from the phantom, threatening bodies of the snakeheads, to the association of the Fujianese migrant bodies with a specific form of vulnerability, a vulnerability that incited a novel form of coercive governmental protection (in the form of detention), as I will show in the next chapter.

## **2.4 *my tears never stop: lines of flight***

Finally, thinking through the affective dimensions of media events and their regulation by focusing solely on the lines of force that seek to capture them and inscribe

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<sup>19</sup> This is where I differ from approaches that focus narrowly on ideology or discourse in the abstract, that tend to argue that any particular instance is just an inevitable repetition of a history of racialization that has played out for hundreds of years. Such a predetermined stance of inevitability forecloses the complexity of the process through which such racializations are put into place in the moment and how these associations are renewed and remade, as well as altered, in everyday life.



them within sovereign, governmental forms of power would make for a very closed, incomplete and overdetermined (not to mention pessimistic) account. Immanent to the affective power of the mediascape, *lines of flight* are always emerging and assembling (Deleuze 1986). It is crucial to pay attention to these emergent forms of escape, exodus and resistance; along with the counter-affects and -events that may be generated and mobilized in response to spectacular news events. Affect cannot be reduced to a strictly regressive force (as deliberative political theories often do). It is also a crucial resource in political and social change because attention to the “something else” at work in affect (Seigworth 1999) can reveal emergent forms and potentialities that elude or counter the dominant rationalities of governance and the attempts of systematic political power or state agencies to capture them.

These sources of emergence and newness in social and cultural formations, the potential lines of flight and lines of becoming, also present crucial resources and occasions for political change (Deleuze 1989). News events, particularly spectacular ones that fuel repressive, exclusionary responses, also tend to provoke counter-responses, generating counter-mobilizations and movements. The flashpoints generated by news events around migration always contain elusive elements, potentialities, and immanent contradictions that political movements and artistic interventions exploit, seize upon, develop to build new momentums and counter-spirals of affect. Some lines of flight work to confront governmental state practices head on while others find ways to sidestep, evade or escape them; still others remain indecipherable to hegemonic state powers. Alternative media and engaged art, as privileged sites of affective and performative reworkings of the failures and remainders of dominant state policies, are a set of fields where incipient emergent lines of flight are generated and articulated.

This points to a larger methodological trajectory in this thesis, because such lines of flight are not always or often discernable through the camera lenses or keyboards of the major, mainstream news media (though they do at times engage and confront the corporate mediascape). Recently in Québec, emergent movements of non-status peoples and anti-deportation campaigns in particular have chosen to strategically engage with mainstream corporate news media in attempts to mobilize their own counter-news events and unleash their own counter-affects to impact the governmental regulation of migration and deportation. More often than not however, they take place, often by design, below the thresholds of visibility and audibility of mainstream news coverage. In order to begin to trace these emergent lines of flight, we need to seek them out in sites beyond the structures of legibility of the corporate news media: in small-scale and experimental sites of autonomous political and artistic interventions, in the informal, undetected routes of undocumented migrations themselves, in migrant camps and underground non-status communities, in alternative and experimental media, and in grass-roots forms of activist mobilization around refugee and non-status migration. Such minor sites often operate beyond the threshold of media or governmental visibility, emerging, coalescing, and re-forming to create their own momentums and sites of emergence.

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Confronting the news event around the Fujianese boat landings and the policies that resulted, Paul Wong's *Prisoner's Lament* (2000) is a provocative two-minute video produced for an anti-racist campaign by the Canadian Race Relations Foundation. The campaign has been broadcast as a series of television commercials since 1999, which in itself is suggestive of the strategies alternative video artists such as Wong are adopting to

insert themselves into the mediascape through mainstream media sites and formats. A densely layered video montage, *Prisoner's Lament* intersperses close-ups of Canadian high school students who came to Canada as refugees speaking of their hopes and dreams. These mini-testimonials are overlaid with images of historical newspaper headlines suffused with anti-immigrant and specifically anti-Asian sentiments, layered onto the mediaphemes of the 1999 Fujian Chinese refugees being led into detention by immigration agents. The connecting thread of the video is a haunting *recollection image*, a song of lament sung by some of the women detainees:

*To come to this far away land, we suffered and risked our lives. In this civilized country, I could not have imagined that we would end up being treated this way. You saved us to be locked up in your prisons. Is this your justice? I do not understand. How could I not be sad? We are shuffled from here to there, days and nights turn into months. We know no peace. My tears never stop. What is the crime? I do not understand.*

As a recollection-image (Marks 2000)<sup>20</sup> of the migrants' detainment, the prisoner's lament stands in stark affective contrast to the mainstream news framing of the migrant's landing. By layering anti-immigrant headlines from these past historical events over the images of the detainees being led away in chains, Wong effectively foregrounds the continuity between these historic and current events. Whereas much of the mainstream media evacuated all traces of the migrants as subjects by framing the event strictly in terms of the threat it allegedly posed to the "Canadian public," the prisoner's lament counters this suppression by evoking the affective impacts and recounting the event from the perspective of the migrants themselves using their own available forms of affective expression. *My tears never stop*. The hyper-circulation and amplification of outrage and

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<sup>20</sup> Laura Marks argues that intercultural cinema often employs *recollection-images*—visual images, songs, material artifacts, and sensory experiences—that index forgotten histories, histories that have been silenced or erased in the official historical archive as well as the media (Marks 2000, 37, 50; Deleuze 1989, 47-50).

anger at these migrants' presence "on Canadian soil" through the mediascape served to ensure that the affects animating these migrant tears remained unamplified, only able to surface and resonate through such sites as Wong's video and the work of activist supporters such as DAARE (Direct Action Against Refugee Exploitation). Yet the surfacing and reverberation of these tears at such sites forcefully materializes the racialized and very bodily impacts of those floating affects as they touched back down on the migrants, resulting in the caging and eventual expulsion of the bodies at the center of the media storm. *What is the crime? I do not understand.*

## **HUMAN CARGO, SNAKEHEADS, AND “PROTECTION”**

### **THE FORCEFUL GOVERNMENTAL TRAJECTORIES OF NEWS EVENTS**

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*The federal government remains frozen at the switch even after I warned on July 25 that a second derelict ship with illegal aliens was on its way. As we all know, it arrived this week. Now I learn that a third ship is heading for North America. Worse than that, dozens more stolen boats are being assembled in a staging ground controlled by criminal organizations... Triads, or Chinese ethnic gangs, are involved and are making fortunes smuggling narcotics and people out of China, sources say.*

*The federal government's new immigration minister, Elinor Caplan, must move on this immediately and invoke her authority to collect and deport all those Chinese who have come here so far. She should also completely revamp the so-called "refugee" process in this country, which is being abused by illegals and their smuggling accomplices... Besides the damage to our society, these illegal aliens ruin their lives because they make a Faustian pact with some of the most evil persons in the world.*

*In other words, our refugee policy has resulted in the importation of a criminal element that was not here and need not have arrived... Doesn't anyone in Ottawa realize that 40 per cent of Vancouver's crimes are committed by "refugees" from the Chinese mainland because of the same reasons?... The toll in human terms of this naïve and stupid policy is enormous... These Chinese street criminals and prostitutes are costing our society a fortune in law enforcement costs and in human tragedy.*

*I am the first to admit that Canada should do its bit to help refugees, but only genuine ones... Through sheer incompetence, the federal government is ruining lives, exposing Canadians to grave risks and financing the creation of a criminal class that will hurt this country for years to come.*

*If these boatloads are not deported to send a message to others on their way—and the refugee process revamped—then the government of Canada should be sued by the provinces, municipalities, taxpayer organizations and other victims of refugee crimes. I will personally contribute to such a lawsuit.*

--Diane Francis. "Liberal immigration policies are creating criminals." *Ottawa Citizen*. August 14, 1999.

Over the course of the summer and fall of 1999, Diane Francis was among the most vociferous of media commentators to devote the greatest amount of column space to the boat landings. Her columns are notable, not so much for their extreme nature, but on the contrary, for the extent to which their vitriolic tenor encapsulates the range of

affective tones along with the key discursive frames produced in the wider media event. This chapter focuses on the discursive dimensions of the news event in order to account for the governmental effects they ultimately produced. Tracing the emergence of some of the key discursive framings of the event with respect to illegality, bogus refugees, snakeheads, and human cargo, the surfacing of a wider governmental problematization of human trafficking will then be considered. In order to do so, recent theories of governmentality will be examined and recast later in the chapter, offering us a lens through which to understand the drastic governmental response that ensued. By tracking the governmental impacts of the news event along with the outlaw discourses generated by activist groups in response, I will show how the tandem assemblage of the “over the top” affective tone and the discursive frames that emerged through the media event produced a climate in which basic governmental norms of due process for the migrants were suspended and set aside. The migrants became the targets of a form of legal exceptionality that resulted in their unprecedented caging (detention) and deportation (Agamben 2005). Ironically, this was presented as governmental *protection*. In contrast, the outlaw discourses of activist groups such as DAARE (Direct Action Against Refugee Exploitation) took the detained migrants’ narratives and realities as a starting point to forge a counterpolitics that fundamentally sought to challenge the repressive treatment and discursive entrapment of the Fujianese migrants.

## 1 The Discursivity of News Events

The discursive dimensions of news events constitute an altogether more familiar methodological terrain in media and cultural studies than the question of news affects considered in Chapter 2, one that has been thoroughly analyzed, theorized, and debated. Given the contributions of the existing literature on this event (Hier and Greenberg 2002; Mountz 2003), this chapter does not seek to offer a comprehensive discourse analysis of the news media coverage of the summer of 1999, nor to simply apply one preconstituted method of discourse analysis as, for instance, Hier and Greenberg (2002) do in their critical discourse analysis of the Fujianese boat landings. It offers an analysis of the emergence of these news discourses in their articulation with and shaping by the affective and sensory dimensions of the media event in order to account for the governmental outcomes that ensued.

My approach lies somewhere between elements of Foucauldian discourse analysis (of the *Archeology of Knowledge* period), a concern with the articulation of discourses, affects, social, institutional, and material fields (the *dispositif* or assemblage), and a sensitivity to the interpretive and narrative dimensions of discourses that Foucauldian perspectives tend to evacuate or reject outright. The narrative elements of the news play an important role in surfacing the affectivity of news events. I do so openly acknowledging the tensions between the Foucauldian focus on the surface of discourse versus the depth hermeneutic of interpretive and narrative analyses (Rosaldo 1989). In this respect, my approach

departs from most Foucauldian-inflected discourse analysis, in that it extends beyond the surface or positivity of discourse, or that which is present and/or visible.<sup>1</sup>

Perhaps the most comprehensive discourse analysis of this event produced to date is that of Hier and Greenberg (2002). They frame the media crisis as a process of problematization in ways that accord with my own approach in the coming section on governmentality. While they offer an adept overview of some of the key discourses at work in the problematization of the crisis, Hier and Greenberg ultimately reduce these discursive operations to the work of ideology and hegemony. Discourse is presented as a closed ideological system of hegemonic regulation in ways that neglect the role of affect as a powerful element and mobilizer in the process of problematization they describe. One of the few moments where Hier and Greenberg gesture towards the role of affect is in their account of the interpellative hailing of consumers of the news, in which individuals are “summoned to the ideological contents of a news text through emotional connectedness to its embedded thematic frames” (494). One aim of this chapter is to develop a more complex account of the work of affect in the production of the discourses that emerged from the media uproar around the arrival of “phantom ships” on the shores of British Columbia in 1999. Such an account seeks to complicate perspectives that reduce emotion to the role of an instrumental summoner to ideology—perspectives that tend to remain rooted in a propaganda model of the media.

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<sup>1</sup> It has become a truism in cultural studies to dismiss meaning in favor of discursive effects, to focus on what something does rather than what it means. While I understand the impetus for such gestures in response to overly essentialist approaches, I do not adopt an entirely anti-hermeneutic or interpretive stance. I am interested in moving beyond a strict focus on the positivity or exteriority of discourse, to acknowledge a dimension of non-transcendental, socially situated meaning (Agamben 1999). This requires attention to the narrative tropes that organize media and policy discourses in ways that can account for the connotative and affective dimensions of their cultural resonances, how they are mobilized and made effective.



In order to do so, as in Chapter 2, I propose to explore five facets of the discursive dimensions of news media events, each offering a point of entry into the analysis of the news discourses that shaped the governmental outcomes of the Fujianese boat landings in 1999. These include the *énoncés* or statements produced in the course of the event; the key actors in the news event (from the migrants to journalists such as Francis) and the mediatized subjects produced as a result; the constitution of a narrative of the event that began with the approach of the first boat; the key discursive frames and formations that coalesced through the event; and the resulting lines of governmental force that culminated in the detention and deportation of the migrants.

### **1.1 QUARANTINED: Énoncés as Affective Events**

The most basic elements constituting a discursive formation are the key statements that emerge in a news event, what Foucault calls the *énoncé* (statement). Allor and Gagnon (1994) emphasize the praxical character of *énoncés* (as traces of practices), their status as particular statements that constitute the events of discourse (35). Others characterize the *énoncé* as an utterance that has institutional force and authoritative validation as being “in the true” (Mills 1997), or as a function that groups heterogeneous units together to form a common property (Namaste 2000). While I draw on each of these approaches, I also emphasize how the *énoncé* in the context of a media event is imbued with an affective quality, one that is closely tied to its emergence from and co-articulation with the sensory, portable units that constitute particular mediaphemes. This affective aspect fuels the effectivity of the *énoncé*—amplifying and inflating specific qualities in ways that can make them “larger than life”: the ghost ship, the terrorist sleeper cell, the lying refugee, the evil leader of a rogue state, the Y2K virus. Such statements closely follow the sensory

(verbal, auditory, visual) enactments of the news event, emerging in the discursive take-up of particular mediaphemes. They occur in the movement, propulsion, and contagion of specific phemes across the mediascape. The qualities and resonances of such énoncés-in-motion contribute to the amplification of media events and the formation of discourses.

Indeed, the énoncés produced around the Summer of the Boats were closely articulated with the mediaphemes that carried the news event. The most immediate set of statements to appear were tied to the visual phemes and sound bites around the boats themselves: the moment to moment tracking of the “ghost ships,” the images of the idling mystery craft, the continual repetition of soundbites emphasizing the condition of the vessels: rusty boats, dilapidated containers, rickety cargo ships.<sup>2</sup> These phemes produced a set of anticipatory statements around the boat arrivals prior to any focused representation of the migrants themselves. The ghostly qualities that were played up by the media served to affectively convey a sense of ambient threat while simultaneously setting up a momentum of ominous portents to come. It also dramatized the mode of arrival as one of stealth and sneakiness. Once the “phantoms” were located and the migrants began to come into view, the obsessive focus on the rusty state of the boats formed the basis for a set of statements that highlighted the poverty of the migrants, based on both their mode of transport (on cargo ships) and the condition of the vessels. This was reinforced by statements dramatizing the dirt and filth on the boats (“festerling mess of

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<sup>2</sup> One lawyer I spoke to with regards to the media coverage of the boat landings underlined the constant and excessive nature of media repetition regarding the rustiness of the boats. As the lawyer noted, most trans-Pacific cargo ships are rusty, yet the media’s endless repetition of this trait became self-reinforcing to the extent that it was automatically associated and almost always mentioned in connection to the event, no matter how irrelevant. Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal, QC-Vancouver, BC).

excrement”<sup>3</sup>), which further linked the migrant arrivals to portents of disease and disorder.

The statements produced around the migrants themselves were also closely tied to mediaphemes that emerged out of the initial representations of their arrival. The depiction of the migrants in medium group close-ups in many of the images of the arriving boats produced a sense of overcrowding and the *arrival of a clamoring horde*. The use of water metaphors has a long history in discourses of migration (Green 2002,1-2),<sup>4</sup> and they were amply drawn upon in statements linking the migrant arrivals to overwhelming flows, waves and floods: waves of boat people, tidal waves of people swamping the mainland, another wave arrives, the third wave, the migrant flood, the need to stem the flow (McGinnis 2001, 14).<sup>5</sup> Cumulatively, these statements (clamoring crowds, floods) served to frame the migrant arrivals as a menacing *invasion*.

Images of CIC and police agents boarding the boats sporting surgical masks, along with headlines such as the massive one in *The Province* that exclaimed “QUARANTINED”, solidified earlier statements linking the migrants to *disease* and *contagion*.

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<sup>3</sup> Christina Spencer. “Hoist the flag! The hordes are here.” *Ottawa Citizen*. July 24, 1999.

<sup>4</sup> “Les mouvements de population contemporain ont été pour beaucoup une histoire d’eau... En français comme en anglais, les vagues (waves), les flux (flows), les courants (streams), et la marée humaine (human tide) décrivent aux sens propre et figuré les nouveaux arrivants” (Green 2002, 1).

<sup>5</sup> McGinnis (2001) noted over 65 water metaphors in the headlines and stories of *The Province*, *Times Colonist*, *Vancouver Sun*, and *The Globe and Mail*.



*Figure 2.1 The Province, July 21, 1999*

The extent of this affective association was later put into play in very bodily terms in the courtroom, when the judge and all those present in the courtroom wore surgical masks at the first hearing of the Korean crew charged with dumping the migrants from the second boat in Gilbert Bay (courtroom sheriffs wore masks and respirators). A quarantine order was issued, and the proceedings were delayed by the chief judge until all the courtroom staff were equipped with masks. This despite the fact that all the migrants and crew had been examined by immigration officials and given a clean bill of health.<sup>6</sup> The highly affective means through which these statements and associations were produced also carried a deeper historical resonance, as many of them echoed earlier anti-Asian racist

<sup>6</sup> *Edmonton Journal*. "Latest migrants back in China in three weeks?" August 17, 1999.

panics that arose in British Columbia around the “Yellow Peril” during the 19<sup>th</sup> and early 20<sup>th</sup> centuries (Chan 1983; Sugimoto 1972; Miki 2005, 19-21; Roy 1990; Wong 1990).

Amidst the uproar of the arrivals, the media clamor generated a cluster of statements that framed the Fujianese migrants in specific and highly charged terms. Perhaps the most obvious statements emerged in the bombardment of headlines about “*illegals*,” clearly linking the migrants to a racialized illegality that further amplified the outrage. The references to illegality were produced on a number of simultaneous fronts: their mode of entry, their means of arrival (alleged trafficking), the implication that they were seeking “under the table”/illegal employment either in the United States or Canada (with further imputations that some of the women would end up in the sex trade),<sup>7</sup> and ultimately through their mere presence on “Canadian soil.” The attribution of illegality was continually amplified despite the fact that once the migrants landed and claimed refugee status, they had a legal status from the perspective of governmental policies and immigration law.

This sense of illegality was further reinforced by the many statements linking the migrants to *criminality* through their alleged payment and indenture to traffickers tied to a global Asian mafia (Duffy 1999), and to the detention of many of them in provincial prison facilities. When protests broke out among the migrants in detention, they were called riots. Several news items suggested that the “rioters” were brandishing weapons that turned out to be kitchen utensils.<sup>8</sup> Thirdly, many of the phemes generated at the

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<sup>7</sup> According to Andrew Duffy writing in the *Montréal Gazette*, “To collect on a bad debt, the [Chinatown] gangs [that act as enforcers for the snakeheads]...will often force women into prostitution or break the bones of a debtor.” Andrew Duffy. “A flawed Shangri-la: Life is hard in the promised land, Chinese migrants find.” *The Gazette* (Montréal, QC). Sep 19, 1999.

<sup>8</sup> “The compound search was sparked after an RCMP officer noticed a migrant attempting to conceal a tinfoil dinner plate...‘We found hidden or concealed items that had the potential to be used as weapons,’ RCMP Const. Tracey Rook said yesterday. ‘One individual had taken a tinfoil dinner plate, had torn a

time of the migrant arrivals produced statements that characterized them as *abusers* of a *benevolent Canadian system*, exploiting the porousness of Canada to enter the United States. Here were illegals unfairly jumping the queues of honest would-be migrants trying to enter by the proper channels—manipulating and mocking the generosity of Canada.



Figure 3.2: Adrian Raeside, *Peace Arch News*, September 4, 1999

Finally, a new articulation emerged in statements that characterized the migrants, not only as “illegals”, but as objects to be transported, goods that had been trafficked, condensed in the ubiquitous term: *human cargo*. In some senses, this was at odds with their characterization as ultra-manipulative sneaky abusers of the system since the attributed status of cargo implies not only a lack of agency, but an inanimate state of objecthood and passivity that rendered them as transportable goods. As I will further consider in Section 3.1.4, the larger formation to emerge from this cumulative ensemble of statements tied into a more durable discursive figure with a longer history and many variants: that of the

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piece off, folded it a number of times and given it a very sharp edge so that it could be used as a weapon.” Jim Beatty and Chad Skelton. “RCMP increases security around migrants after finding weapons: Officials to rule if Chinese are set free during claim process.” *National Post*. July 27, 1999.

*bogus refugee*, whose inauthenticity as an economic migrant is constantly juxtaposed against the shadow figure of the authentic, truly deserving refugee.

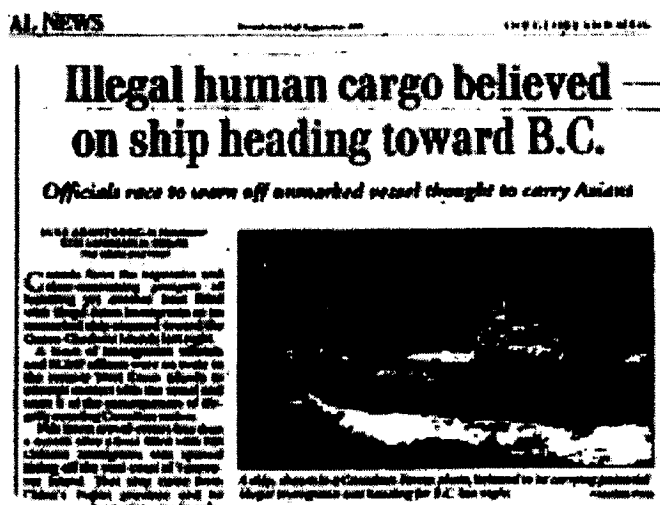


Figure 3.3: *The Globe and Mail*, July 21, 1999

Another key set of statements that were crucial to the larger framing of the event as a matter of trafficking were produced around the shadowy mediaphemes of the alleged smugglers of the migrants, a.k.a. the *snakeheads*. The media drew on colloquial language and what was referred to as “Chinese folklore” to legitimate its use of the term *snakehead*. As Duffy put it in the *Montréal Gazette*,

In Mandarin, snakeheads are known as “she tou,” and their customers, snake people, are called “ren she.” The names are inspired by Chinese folklore, which holds that a single snake placed in a basket and transported between cities will most often die, while dozens of snakes in the same basket will survive.<sup>9</sup>

Interestingly enough, a seemingly unrelated media event took place in the US media beginning in 2002 around the appearance of a non-native ostensibly predatory fish known as the snakehead in several lakes and rivers in Michigan, Washington, and New York. While unrelated, the media’s characterization of the snakehead had some uncanny

<sup>9</sup> Andrew Duffy. “A flawed Shangri-la: Life is hard in the promised land, Chinese migrants find.” *The Gazette* (Montréal, QC). Sep 19, 1999.

resonances. The *Washington Post* for instance reported that, “The snakehead fish, a voracious Asian invader...has reappeared in Maryland.”<sup>10</sup> The strange yet undeniable resonances between the framing of the snakeheads as human smugglers and the snakeheads as predatory fish, both in terms of “Asian invasion,” attests to the persistence, tenacity and circulation of alarmist discourses of immigration across ecological and political media events and across transnational mediascapes.

The presence of the snakeheads throughout the media event remained insinuated and attributed rather than visibilized or displayed in any concrete terms. The elusive snakeheads were portrayed as the puppeteers pulling the strings, surreptitiously controlling the phantom ships behind the scenes. They were presented as an ambient, omniscient threat that could materialize and insinuate itself at any time and anywhere it wished, most notably in the immigration processing barracks, court hearings, and detention centers where the migrants were held. The circulating ambient threat the media generated around them was also linked to their alleged presence as a transnational network of decentralized, organized crime. The snakeheads were portrayed as taunting the Canadian state through their ability to maximize the mobility and flexibility of their networks to bypass a weak immigration system. The power of their global reach was also imputed in the alleged threats of retaliation they made against family members of the migrants in Fujian to prevent the migrants from implicating them or offering any information about them.<sup>11</sup>

A final and crucial set of statements were generated around what the media characterized as the alternating target, patsy, and *victim* in the emergent trafficking

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<sup>10</sup> David A. Fahrenthold. “A Creepy Catch of The Day.” *Washington Post*. April 29, 2004.

<sup>11</sup> *Times Colonist*. “Don’t give up snakehead fight.” Victoria, BC. October 14, 1999.



discourse being constituted: Canada. Specifically, Canada as an elastic focal point condensing a shifting continuum and set of displacements between the Canadian nation and the Canadian public on the one hand, with the Canadian state, and most concertedly, the Department of Citizenship and Immigration, on the other. Several interrelated statements were produced around the Canadian nation that contributed to a mounting affective resonance that would return to haunt future events around immigration in the years to come. The first was the portrayal of Canada as *naïve* and *soft*, allowing its naïve generosity and goodwill to be taken advantage of so that it could be played for a patsy and a sucker by malevolent and manipulative external forces (both the snakeheads and the migrants).



Figure 3.4: Adrian Raeside, *Times Colonist* (Victoria), July 22, 1999

As Ahmed (2004) has argued, such attributions of softness with respect to immigration and asylum come to attach themselves to a national character (whether Canadian, British, etc.), in which the peril becomes that of turning into “...a soft touch nation...too

easily seduced...taken in by the bogus: to 'take in' is to be 'taken in'" (2). The only response to such a soft, manipulated, indeed feminized state is to harden the nation's borders, to seal itself from others, to become a nation that is "less emotional, less open, less easily moved" (2), and ultimately, to harden or "toughen up" immigration policies. In this way, political stances towards immigration policies are intrinsically informed by and shaped through affective and emotive dispositions that carry very concrete political effects.

Tied to this sense of degraded softness, many statements emphasized the *porousness of Canada's borders*, permeable both to clandestine incursions and to the magnetic attraction of the United States drawing "illegal" migrants and desirable immigrants alike across the southern border. These were often articulated with *domestic metaphors of the nation*, the nation as a house or a body with legitimate *front door* modes of entry versus illegal *back-door* incursions. The spectre of illicit back-door entry was mobilized to produce anxious sexualized statements regarding a nation emasculated by queue-jumping back door illegals, penetrated and invaded from behind.

This opened the way to the framing of the Canadian public's response in reactive terms. The bombardment of headlines portraying a fed up and outraged Canadian public, exclaiming "ENOUGH!" What is most notable about these statements are the techniques through which they were produced: the citation of the most extreme views expressed in opinion polls. In other words, select responses to specific, highly framed opinion polls<sup>12</sup> and reporters' questions were made to stand in for the Canadian public as a whole, and then further amplified to reinforce that equation through the intensive circulation of these selective citations in headlines and television news reports. The

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<sup>12</sup> For a thorough analysis of the selective discourses produced through polling practices, see Lewis (2001).

citation of (what became portrayed as) a unified, forceful public anger through such poll-citing headlines also played a key role in the affective spiral its very circulation fed, producing what, following Ahmed, might be recast as a social performativity of anger and backlash. Ahmed argues that emotions become performative effects of the very naming of emotions through speech acts (2004, 13). This is one clear effect of the intensified citation and circulation of anger and outrage in newspaper headlines such as: “Public rage takes aim at refugees: Many upset that smuggled boat people may stay” (Daniel Girard, *Toronto Star*, July 30, 1999).

Such a framing of the Canadian public created a strong marking of the boundaries between the implied national “us” versus an external, foreign “them” in the context of a multiplication of énoncés around the porousness and softness of the nation’s borders. Much subsequent media coverage centered on the costs to the Canadian public of detention and processing of the refugee claims of the migrants, taken as further evidence of the manipulation of Canadian generosity and good will.

With respect to the Canadian government and more specifically Citizenship and Immigration Canada, Canadian immigration policy and the CIC became central targets of the amplified outrage that the news media channeled on behalf of the Canadian “public.” Immigration policy became the hot subject of both opinion pages and political cartoons, with the right wing Reform party demanding for an early recall of Parliament from its summer break to urgently respond to the failings of immigration policy in response to the boat landings. Citizenship and Immigration Canada was initially portrayed as ineffectual and bumbling. In contrast, those branches of the Canadian government who were involved in a more visible, front-line enforcement response, from the Coast Guard to the prisons that held many of the detained migrants, were portrayed

in more heroic terms (McGinnis 2001, 16). As I will consider further, this prompted CIC to devote a huge amount of energy and resources implementing an emergency communications response effort to counter the media spin and re-establish an image of governmental control and toughness with respect to the Fujianese migrants.

## **1.2 Blurred Faces, Phantom Snakeheads, Angry Publics**

The media event around the Summer of the Boats produced a series of mediatized subjects as key actors in the story, from the shadowy snakeheads to the huddled migrants to CIC officials, each drawing on very different and uneven representational strategies. In this section, I am concerned with questions regarding both the extra-representational actors and the mediatized subjects in a news media event, along with how they position themselves or are positioned in relation to it. My approach to these questions encompasses both a *representational* level, asking how key personalities and actors are presented and represented in news texts, and who becomes the personification and public face of an event; as well as a wider *social* level, accounting for those who may or may not be represented in the news texts per se, but who play a role in the shaping and production of an event. They may be participants who refuse to speak to the media, anonymous sources or leaks, publicists and public relations advisers, handlers, or family and friends close to the subject of a hot story.

My distinction between the actors in a news event and the mediatized subjects that are constituted through the event is strategic. The two may converge, as is generally the case with the central subjects of a news story. Yet many actors are at work in the event who do not become visible as subjects of the story in media coverage. The question

of agency here is complex as well. The central subjects of a news event may be actors with a greater or lesser degree of agency in the making of the news event (sometimes, as in the Summer of the Boats, it can be a very restricted agency), while the behind the scenes actors in a story may carry a tremendous amount of agency. In this sense, journalists, editors, photographers and media workers are always actors in a news event, whether in more quotidian ways, based on the interpretive work they do in narrativizing a news story, or in more exceptional or flamboyant ways, as when a journalist or media commentator becomes an explicit actor or personality in the story itself. One instance of the latter is anti-immigration commentator Diane Francis, who often invokes her own status as a Canadian immigrant from the United States to legitimate and position herself as a right wing attack force in news events around immigration.

Of particular relevance here are classical Foucauldian questions regarding the order of discourse (*l'ordre du discours*): who is granted access to speak to the media (or who is given “face time” in newsroom lingo), how is that speech positioned, and what forms or genres is that speech framed in? Is it a voice of individual testimony (of the sort that Berlant (1997) and Fortier (2002) have extensively analyzed), a voice of expert opinion, of political or social authority? What parameters govern that speech, how and by which techniques is that speech regulated, what is left out, suppressed, rendered inconceivable within the terms of the emergent discourses sanctioned by such media techniques? And who is rendered silent, devoid of speech via the exclusions, negotiations, and contestations around the granting of space in the news event to particular subjects and representational actors? Which subjects are named but not directly represented in visual or oral terms? Which actors are represented visually but are not able to speak (and what media techniques are employed in such instances—darkened subjects, masked voices)? The

typical representation of non-status “illegals” with blurred-out faces is telling here. How do intermediary actors, from publicists, handlers, and communications strategists, to spokespeople and speechwriters impact the speech produced? Who seeks out or invites media attention (and for what purposes), and who shuns or avoids it at particular moments in a news event? To what extent are individuals or personalities the focus, and when and on what terms are social, collective actors granted visibility or presence in a news event? How are moments or movements of resistance to the predominant discursive trajectories of a news event presented and represented (or not)?

The énoncés that coalesced around many of the key actors in the story—the migrants, the smugglers, the government/CIC, the Canadian “public”—played an important role in shaping the range and resonances of the highly scripted and regulated subjectivities produced through the news event. What follows is an examination of some of the modes of representation of these actor-subjects, the more durable discursive figures that were produced as an outcome of these scriptings and regulations, along with the extra-representational actors in the story.

To begin with, the spectre of “illegal migration” dramatized and amplified by the news media drew on both recognizable and new modes of representing and visibilizing the clandestine. Perhaps one of the most long-standing tropes in media representations of undocumented people is the familiar media practice of blurring out faces and disguising the voices of those who are forced to remain unidentified and undetectable to the public regimes of governmental visibility. Yet in the case of the Fujianese migrants that summer, the apparition of the migrants on the closely tracked “ghost ships” shifted the standards somewhat, and the migrants became open game for the media to track and hunt. We saw their faces, but never in close-up, and rarely heard the voices of individual testimony

usually reserved for the authentic refugee demonstrating his or her worthiness. The most prominent visual phemes circulated around them showed them in group medium shots that played up their numbers and crowding, and later, in chains and prison garb leaving their hearings in single file to be returned to detention. The first instance produced the migrants as a clamoring, multitudinous mass subject devoid of individual subjectivities or histories, the second as a criminalized series of what Deleuze (1992) calls *dividuals* in the throes of a disciplinary spectacle of governmental toughness. Through statements framing them as “human cargo,” the Fujianese migrants were alternately rendered as highly visible but mute objects and/or as manipulative and deceptive invaders who threatened to dematerialize and disappear underground at any time.



Figure 3.5: *The Globe and Mail*, August 7, 1999

Playing off the alternately menacing and mute alterity of the migrants, the other key mode of dramatizing the clandestine and the emergent spectre of trafficking was through the looming, shadowy figure<sup>13</sup> of the snakehead. The presence of the snakeheads

<sup>13</sup> By “figure” here and throughout this chapter, I should note that I am not employing a formalist or purely literary or rhetorical use of this term, but instead invoking a more material sense of a figure as an assemblage that emerges out of the virtual, material, and historical instances and accumulations of a social form with a distinct set of ascribed properties, traits, and affective associations.

was never materialized or visibilized, but was always suggested, rendered affectively as a kind of malevolent phantom puppeteer of the situation. Unlike the snakeheads who were presented as phantom commanders of the clandestine operations, nine Korean crew members from the second boat and others suspected of acting as “enforcers” of the smuggling operation (i.e. physically present on the boats and lower down the chain of command) were summarily identified and prosecuted. In contrast to the mute hypervisibility of the migrants, the media produced the snakeheads as the disembodied yet all-powerful actors of the event, their role all the more potent because they remained a virtual and invisible potential prepared to strike at any moment or location.

Significantly, those CIC intelligence agents who responded most immediately and locally to the boat landings operated with a different understanding and framing of the key actors than the media and higher echelons of the government, insisting there was no conclusive evidence linking the migrant arrivals to transnational organized crime.

[They] suggested that...[transnational organized crime] was a sexy term used by enforcement agencies to marshal resources. Higher up in the bureaucracy...the narrative was confident and coherent, part of building an image of power, the perception of control, the need to combat a known evil. Lower down, the narrative was less secure. The image painted for me was a colorful one of frontline officers and street-level bureaucrats scrambling to maintain the façade” (Mountz 2003, 267).

As the central yet invisible actors in the media and governmental narrative, the disembodied, phantom snakeheads were key to the preemptive governmental actions that were soon implemented. This included preventative detention to thwart the presumed disappearance of the migrants into a renewed underground invisibility.

Ultimately, the media’s continuous juxtaposition and linking of the hypervisible but mute migrants with the absent all-powerful snakeheads presumed to be orchestrating their movements led to a conflation of migrants and smugglers/snakeheads, both



affectively and discursively—a conflation that the migrants paid the price for. Their unprecedented mass preemptive detention was also justified as a means to reach the snakeheads, to send them a signal that this would not be tolerated. This conflation also allowed the government to justify the repressive preventative measure of detention as a means of “protection” of the migrants from their presumed snakehead aggressors. This was an altogether novel articulation of migrant protection that returned with a vengeance in the new immigration act that followed the Summer of the Boats.

Apart from the more immediate governmental measures adopted to respond to the affective crisis generated in the news media, these portrayals of the migrants and smugglers contributed to the production of two more durable discursive figures that created the ground for a longer term problematization (in the Foucauldian sense) of human trafficking. The first resulted from the characterization of the migrants as both bogus refugees and as human cargo. The persistent distinction continuously drawn between the queue-jumping economic migrant and the authentic refugee deserving of a compassionate gaze has become deeply sedimented in contemporary media and policy discourses of migration, and the central vehicle of that sedimentation has been the shifting but ubiquitous figure of the lying, bogus refugee. Yet the very act of positing such a distinction (which is rooted in the discursive policy categories of the Immigration Act) establishes all migrants as objects of surveillance and judgment as to which side of the divide they fall into, and places all others in the position of judges and surveillers. The greater the amplification of the figure of the bogus refugee claimant, the more the counterpart “authentic refugee” becomes a vanishing, phantom figure itself. The news event around the Fujianese boat landings played a large role in renewing and anchoring that discourse in that political moment in Canada. Their characterization as human

cargo, as objects to be transported, as trafficked goods, was crucial to the emergence of the trafficking discourse that was inaugurated through this event. The other crucial figure in that regard was, of course, that of the snakehead/smuggler. The figure of the snakehead became an additional means of racializing the event by evoking Asian organized crime gangs and transnational criminal networks infiltrating and abusing the Canada-US border.

The modes of representing the other key actors in the story, the Canadian public on the one hand, and the Canadian government on the other, drew on other stylistic repertoires and representational traditions. The phemes of an outraged Canadian public in particular were produced in three key ways: the media ventriloquism of polls employed in headlines and news stories in such a way as to appear to channel a transparent public voicing its emotive responses in an unmediated way; the use of “vox pop” style person on the street interviews; and the prominent space taken up in the mediascape by right wing media commentators such as Diane Francis along with right wing political actors<sup>14</sup> amplifying what was presented as a populist sentiment of outrage, of the need to get “tough.”

Francis represents a telling case. She played a key role as a media commentator in mounting a veritable anti-migrant crusade via a continuous series of vitriolic commentaries in the *National Post*. Francis ardently advocated the immediate deportation of the “bogus” refugees, particularly by dramatizing the alleged health threat they posed.<sup>15</sup> Extreme right wing group Canada First reportedly “used the web to whip up

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<sup>14</sup> While I focus on Francis here as one of the most vocal commentators during the event, she was not alone. Another right wing commentator the news media often solicited regarding the Fujian migrants was Martin Collacott, ex-ambassador and senior fellow at the rightist think tank the Fraser Institute.

<sup>15</sup> Diane Francis. “These refugees and immigrants can be deadly.” *National Post*, August 21, 1999.

hostility to Chinese migrants” following the “more than 100 email messages of support they received in the 24 hours after conservative columnist Diane Francis allied herself with the [Canada First] campaign to send the migrants back to China immediately.”<sup>16</sup>

But beyond the more overtly extreme voices that attained a high volume and pitch in the media amplification of the moment, a key way in which such responses were legitimated as part of the righteous indignation of the Canadian public was through a focus on the anti-migrant sentiments of many “legitimate” Canadian immigrants, particularly in the Chinese community itself. One of the key actors in this regard was Joe Leung, vice-president of the Chinese Consolidated Benevolent Association, who was repeatedly shown in the media making statements to the effect that he “would suggest we send them back. They are not refugees—they came out for a better life.” Leung became the news media’s voice and embodiment of the “Victoria (and other) Chinese (who) want migrants out,”<sup>17</sup> playing a major role in legitimizing the framing of the migrants as illegal queue-jumpers. Activists for the migrants such as the Vancouver Association of Chinese Canadians and DAARE (Direct Action Against Refugee Exploitation) manoeuvred some space in the media to counter this predominant anti-migrant wave of coverage, but the affective spiral had already been strongly unleashed in the other direction, and they were left to respond reactively. Towards the end of this chapter, I will consider the work of such groups as DAARE in forging outlaw counter-discourses and contestations of this news event.

As far as the government and CIC were concerned, their primary mode of representation came through the highly regulated media ritual of the press conference,

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<sup>16</sup> John Gray. “Far right using Web to whip up hostility to Chinese migrants.” *The Globe and Mail*. August 30, 1999.

<sup>17</sup> Sandra McCulloch. “Victoria Chinese want migrants out.” *Times Colonist* (Victoria, BC). August 7, 1999.

with carefully groomed CIC spokespeople from the Communications department engaged in prepared, self-regulated, sound bite-friendly media talk that is the domain of trained publicists. Once the initial media crisis broke and CIC passed the initial reactive phase, much of the media simply cited the language and circulated the phemes produced by CIC officials in press conferences and press releases (McGinnis 2001, 7).

Finally, beyond the routine public reporting and representational role they regularly play, the media themselves became THE major extra-representational actors in the event. From the arrival of the first boat, the interception staged by the Coast Guard's MV Tanu was accompanied by boats and planes filled with media personnel competing with one another to get the best photo and video coverage of the arrivals on the water (Mountz 2003, 149). The pressures they exerted, the amplified affect they collectively unleashed, and the framings they brought to the event significantly overdetermined and overwhelmed the governmental response enacted by CIC. An interviewee of Mountz's, stationed at the makeshift processing center that was set up at Esquimault to process the migrants, had this to say about the extreme media pressure they encountered: "The media scrutiny was something I had never experienced. They were on us like hawks all the time. Vultures. We couldn't walk from the gym to the trailer" (150).

The affective amplification enacted through the event was closely tied to the *mise-en-scène* and the performative role played by the media. As Patricia Graham, a news editor at the *Vancouver Sun*, put it, "I think by the time the third boat came we were sort of...okay, now what? How do you come up with different words? How do you come up with different art? How do you play it without sounding the same?" (McGinnis 2001, 4). This drive for novelty and dramatic effect on the part of the media, of journalists and

news producers as dramatizers of the story, contributed to the degree to which the media became the crisis for CIC.

### **1.3 Event Narratives: When Deportation becomes Closure**

The framings produced around these key actors as mediatized subjects is closely bound up with how an event becomes narrativized. Indeed, sometimes the narrative shape of an event is prefigured through the mediatized personification of its central subject, as in the “search for Saddam Hussein” in Iraq in 2003 that implicitly set up the capture and trial of the central villain as the point of narrative closure in a highly militarized North American media spectacle.

The affective spiral set off through a news event shapes the narrativization of that event around key moments, turning points, and points of closure. The political effects of this narrativization of key moments and closures are critical, and become subject to intense political contestation and negotiation by a range of actors and groups. For instance, when Québec police violated the centuries old tradition of refugee church sanctuary for the first time in Canada in March of 2004 by invading a Quebec City church where outspoken Algerian refugee and non-status activist Mohamed Cherfi had taken sanctuary, Citizenship and Immigration Canada and the MCRI clearly sought to make Cherfi’s immediate subsequent deportation the point of narrative closure in that news event. Immigrant and non-status activist groups and supporters struggled and mobilized against this narrative closure to keep Cherfi’s story an ongoing news event, bringing Québec television and print journalists down to the New York state prison where he was being held in detention. Media work in anti-deportation activist circles

often involves organizing to ensure that deportation is not the narrative end point of a news event, attempting to keep a particular case alive and extend its life in the news cycle with enough impact and visibility to force changes in the governmental responses of the immigration department.

Yet, the assemblage that emerged out of the momentum of the event around the boat arrivals, the phemes that drove its circulation in the media, and the énoncés that coalesced resulted in the production of a clear but highly overdetermined narrative around the event. In a sense, the resolution of the story was prefigured in this narrativization. Invasion narratives tend to be resolved through a call for the expulsion of invaders and interlopers. Combined with the anticipatory momentum set up in the media of further phantom vessels encroaching, the only satisfactory closure to the narrative of “Asian invasion” could be deportation (Lai 2000). As the figure of the snakehead emerged to become a central part of the story, the narrative also became one of transnational organized crime, of Asian mafia networks infiltrating and subverting the sovereignty of Canada. The racialized scripts embedded in the narrative were key to its historical and public resonance as a hot topic with long-standing historical antecedents. The trajectory of the narrative that was established made the shift to an enforcement response appear inevitable,<sup>18</sup> grounded in the drawing of a strict distinction between, as well as a strong policing of, sanctioned versus “illegal” movements. In the end, the only acceptable climax to the story could be deportation, popularly portrayed as a victory against the outrageous violation of national sovereignty that had been depicted.

It is also in the narrativization of an event and the borders of that media narrative that the *media non-event* is produced. All the contextual details and elements that don't

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<sup>18</sup> This despite the carefully cultivated image of humanitarian response the country stakes its reputation on.

make the cut, that fall out of the cumulative narrative arc of the news event and its accompanying audiovisual phemes land in the media-produced zone of the non-event... unless different actors find a way to galvanize them into new phemes that enter and transform the narrative flow of the event. The photogenic hyper-visibility of the boat landings created the momentum for their narrativization in ways that relegated the less visible yet numerically superior daily arrivals of migrants at airports into the zone of the non-event. Similarly, the vectors of transnational capital and economic exchange that create the conditions for poverty and economic displacement in Fujian province while making T-shirts produced in China available at bargain prices in Canada (as Sunera Thobani has pointed out) did not factor into the overarching narrative highlighting the cost to the Canadian taxpayer of detaining, processing, and deporting the migrants as part of the outrageous violation that the Canadian public was subjected to (DAARE 2001, 20). The narrative produced around the boat landings was elastic enough to accommodate the apparent tension through which an enforcement response culminating in deportation became the only possible solution, a victory of sorts, and at the same time, a sign of the injustice and fleecing that Canada had been naïve enough to be subject to.

#### **1.4 Bogus Refugees: Illegality and Trafficking as Discursive Frames**

As a news story circulates and is amplified into an event, a larger discursive framing emerges. For Foucault, this framing is the product of an emergent or pre-existing discursive formation that organizes the rules and regularities governing the production of

statements around the event (Allor and Gagnon 1994, 36).<sup>19</sup> The social processes shaping discursive formations are articulated through social practices (government, media, and everyday practices) across a range of institutional and political fields. At the same time, the articulation of elements that emerge in a discursive formation often operate through affective means. For instance, the persistent articulation of matters of security and immigration in recent news events, along with the “stickiness” that holds these heterogenous elements together (Ahmed 2000, 91), is an outcome of the affective work that the news media perform, of the continual repetition that links the two terms together aurally and textually, along with longer histories of their association through racialized affects.

In the articulation of affective elements, énoncés and subjectivities produced around the Summer of the Boats, several discursive formations emerged and were crystallized through the news event. Some of these formations constituted new inscriptions and reformulations of longer-standing discourses around immigration; some were altogether new. They emerged through the close articulation of mediaphemes that circulated and amplified through the mediascape with the statements produced. The key discursive formations that materialized revolved around four key sets of regularities: matters of *legitimacy/illegitimacy* and *legality/illegality* encapsulated through the figure of the *bogus refugee*, *new discourses of protection* in relation to migration, *national sovereignty*, and the *public articulation of trafficking* as a key governmental target of immigration policies.

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<sup>19</sup> I alternate throughout this chapter between the more theoretically precise term “discursive formation” and the more popular term “discursive frame” or simply “frame,” tending to favor the latter for its lighter, less cumbersome resonance and its wider, more popular usage. The purpose behind this terminological choice shall become clear later in the chapter, where several of the interviewees I cite who were involved in the event rely on the notion of media frames and framing in ways that correspond to the more theoretically exact term.



In the first instance, the *figure of the bogus refugee* that emerged through the affective phemes around the migrants became a key nodal point through which the borders between illegal and legal migration, and the even more morally-inflected distinction between legitimate refugees and illegitimate migrants, were drawn and policed.<sup>20</sup> These borders were most commonly rendered through the charged polarity between the authentic political refugee and the economic migrant. The latter was portrayed as arriving from a poverty stricken part of the world, posing as a refugee in order to hitch a ride and gain illegitimate access to Canada's wealth and social programs.

A related version of this distinction drew on a recurring domestic metaphor of the nation: *the front and back door of the nation* as markers of *legitimate immigrants* or refugees (front door) versus *illegitimate migrants* (back door). The violation of the back door as the site of the bogus refugee, a surreptitious, lying queue-jumper, magnified to massive proportions in the framing of the migrants. Such a formation leaves the discursive categories of Canadian immigration policy and their increasing closure unquestioned. The legal/illegal distinction underpinning the illegitimate figure of the bogus refugee—so crucial to the invasion narrative that unfolded—implicitly invokes an enforcement response, from the Coast Guard's tracking of the boats to the prison detentions and mass deportations.

A second discursive formation emerged around the very equivocal and oscillating nature of *the notion of "protection"* when articulated to the Fujianese migrants. On the one hand, the fluctuating moments in which the migrants were depicted as vulnerable prey of the all-powerful snakeheads contributed to a moralizing framing of their preventative detention as a matter of protection of the migrants from further exploitation and abuse at

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<sup>20</sup> For more on what she terms "the regulatory figure of the bogus refugee" in Canadian immigration policy of the 1980s and '90s, see Pratt (2005, 91-108).

the hands of these transnational criminal networks. This notion of protection took on particularly sexualized and moralistic contours when the migrants ostensibly receiving protection were women who, it was suggested, would be led or deceived<sup>21</sup> into the sex trade. In other moments when the migrants were predominantly framed as a threat or public health risk, the protection at stake was centered on the Canadian public in need of protection from the migrants through a range of means: from surgical masks to prison detention to other *cordon sanitaire*. These oscillations and slippages between the two framings of protection opened the way to an unprecedented enforcement response as a means of protecting the migrants by protecting the Canadian public. Here we see a major reformulation of the traditional humanitarian conception of refugee protection as the compassionate provision of a safe haven and hospitality to protection as “benevolent” enforcement, preventative detention, and deportation—protection that operates through a fundamentally preventative logic of enforcement in response to an invisible, ambient, omnipotent threat. In the coming chapters, I will elaborate further on what I will argue is a novel and fundamentally biopolitical notion of protection.

Perhaps most significantly, the news media spectacle around the boat landings inaugurated the Canadian appearance of a *public discourse on human trafficking* that explicitly articulated irregular migration from non-Western source countries to transnational criminality. Emerging from the énoncés of human cargo and snakehead smugglers, and fuelled by the affective spiral that was unleashed, this new discursive formation around human trafficking triggered a major reconfiguration of governmental policies and anti-trafficking measures. This formation converges in several key ways, with the

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<sup>21</sup> For more on how the trope of deception becomes central to discourses of sex trafficking of women, see Andrijasevic (2004, 37-39).

governmentalization of feminist anti-trafficking discourses (Sharma 2003, 2005; Andrijasevic 2004).<sup>22</sup> As we shall see, this cleared the way for the normalization of the crisis through the introduction and implementation of trafficking policy discourses and measures as a central pillar and innovation in Canada's latest Immigration and Refugee Protection Act (IRPA) that was passed in 2002. As Nandita Sharma (2003, 2005) has argued, this governmental call to put a stop to trafficking reinforces policy measures and practices that further criminalize movements of migration deemed "illegal" because they take place outside the sanctioned categories of immigration policies. This discursive formation can take on particularly gendered, sexualized, and racialized contours as it tends to center on women and children, who are often (though not always) associated with sex work. They are almost always portrayed as devoid of agency and in need of governmental protection of the second, biopolitical enforcement form described above.

The final key discursive formation to emerge was a well-worn and long-standing one that nonetheless took on new expressions and configurations; the bogeyman of *national sovereignty* and the *porous national body*. The level of outrage and affective noise that the media event generated was also an outcome of the framing of the mere potential of illegal migration and trafficking—even in its spectral, virtual form—as a phantom menace, a violation of national sovereignty. The nation was a leaky, porous body; an insecure house. As the guardian of national sovereignty, the state needed to restore a perfectly closed, impenetrable body, immune to illicit back door entry. But the body was leaking, waves of migrants flooding its porous borders. The state had gone soft, was bending over so far its back door was wide open. "The back door is open, come o-o-on

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<sup>22</sup> For a comprehensive critique of the role that feminist anti-trafficking politics have played in governmental anti-trafficking measures targeting migrants, particularly migrant sex workers, see Andrijasevic (2004), Sharma (2003, 2005).

in.”<sup>23</sup> The only way for it to be cleansed, restored of its purity and morality, was through the expulsion of the violators, the punishment of the back door men and women, deportation becoming the *sine qua non* of national sovereignty through the actions of a tough, virile state.

### **1.5 Governmental Lines of Force: Mass Detention and the Spectacle of Toughness**

A key aim of this chapter thus far has been to account for the combined assemblage that emerges from the affective propulsion and amplification of a news event together with the discursive framings it produces, raising significant questions regarding the governmental effects of an event that produces a demand for a visible display of toughness on the part of the state immigration apparatus. One of the tasks of the remainder of this chapter is to examine and trace the governmental lines of force that emerged out of this particular news event, and critique how it is that those lines of force ultimately came to be inscribed on the bodies of the Fujian migrants in very direct and severe ways. Following the literature on governmentality, which I examine further in the coming section, the governmental effects of a news media event tend to be generated through a process of social *problematization*, the production of “new” problems (or so they are framed) demanding “new” forms of governmental and/or social intervention.

According to Allor and Gagnon (1994), governmental discursive formations seek to articulate emergent questions, problems, and projects to the lines of force at work in already existing social and institutional sites (37). Furthermore, the *dispositif* or assemblage

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<sup>23</sup> *The Globe and Mail*. “The back door is open, come o-o-on in: Canada’s immigration system perplexes even the pros.” (Editorial). August 9, 1999.

acts to articulate discursive and non-discursive elements, whether social, institutional, affective, or material, along particular governmental lines (33). How is an event captured and managed by existing discourses and lines of force, and to what extent does it represent a break from or disruption of them? What institutional and governmental sites are interpellated, affected, and targeted by an event? What responses does an event activate or elaborate, and what are the affective, social, and material effects of the dispersion of the news event into everyday life on a popular level? These questions are central preoccupations in the coming pages, and I will consider them in further depth as I elaborate the theoretical terrain related to questions of governmentality, state racism, and biopolitics.

The media spectacle around the boat landings prompted what was deemed to be a crisis within the Canadian government, particularly for CIC. Based on her interviews with civil servants in the immigration department, Mountz (2003) argues that the media's production of an intense affective climate exerted a massive social and political pressure on CIC to demonstrate a visibly tough response to the crisis on behalf of the so-called Canadian public. While we might question why and how such an event comes to be deemed a crisis by and for governmental actors, Mountz' interviews nevertheless portray governmental workers completely overwhelmed and (somewhat paradoxically) experiencing a sense of powerlessness in the face of the climate created by the media. The media storm pervasively impacted their day-to-day work throughout the event—to the extent that the governmental response became completely oriented towards and formulated in response to the news media. Governmental authorities felt under tremendous pressure to project an image of a government in control of the situation and of the nation's borders. The fear of the appearance of a loss of control, combined with the

claim that all of the migrants arriving after the first boatload constituted a flight risk, propelled the ultimate governmental policy response and perceived solution to the crisis: an immediate and unprecedented mass detention of the refugee claimants—many, particularly the women, in prisons.

In the final sections of this chapter, I examine the political trajectories between the news media event, the governmental policy response implemented by CIC regarding the boat landings, and the outlaw discourses generated by activist groups protesting the governmental response to the migrants. In the coming section, I offer a brief consideration and critical appraisal of recent theories of governmentality, examining how they might be recast to help us analyze the historical and contemporary politics of immigration policy in Canada. I then build on these insights to develop a more concrete account of the specific governmental trajectories and the emergent politics of protection that coalesced in the Summer of the Boats, along with the outlaw politics that arose to challenge them.

## **2 The Governmentality of News Events: Problematizing Human Trafficking and the Promise of Protection**

The federal government introduced a tough new immigration bill Thursday that would crack down on people smuggling and make it harder for criminals to seek refugee status.

"The bill has been rushed and, in fact, will be pushed through Parliament on an expedited basis so that government can show to the public its dynamism in fighting illegal immigration," Victoria lawyer David Aujlia said...

Immigration Minister Elinor Caplan said the proposed legislation would curb abuse while allowing "the world's best and brightest" to enter Canada. "Closing the back door to those who would abuse the system allows us to ensure that the front door will remain open," she said.

--Gerard Young. *Times Colonist* (Victoria, BC). April 7, 2000.<sup>24</sup>

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<sup>24</sup> Gerard Young. "Migrant smugglers face tougher penalties." *Times Colonist* (Victoria, BC). April 7, 2000, final edition.

Several months prior to tabling the bill, Citizenship and Immigration Canada commissioned a poll from Ekos, one of their main polling firms, to help the Minister prepare her presentation of the legislation to the public. Two weeks after tabling Bill C-11, which was passed into law as the new Immigration and Refugee Protection Act two years later in June of 2002, Minister Caplan embarked on a highly publicized mission to China. There she met with officials from Fujian province to “stem the tide of Chinese migrants showing up on the West Coast. Caplan will try to send the message that people should not put their lives in jeopardy by taking a boat trip to Canada—only to be welcomed to detention and possible deportation.”<sup>25</sup> Caplan framed her intervention in moral terms that implicitly drew on the discourse of protection that would eventually become enshrined in the new IRPA (“protection act”). According to the *Montréal Gazette*, “Immigration Minister Elinor Caplan says the smuggling of Chinese migrants is the modern-day equivalent of the slave trade and must be stopped for moral reasons.”<sup>26</sup>

One month later, in May of 2000, the government carried out the largest mass deportation in recent Canadian history, removing 90 of the migrants by charter plane. Immigration officials credited Caplan’s recent visit to China for making the whole operation possible, as she was able to secure the necessary travel documents from Chinese officials to allow the deportations to go forward. On this occasion, Caplan announced that the deportations “should send a clear message to smugglers. ‘They’re not going to win. Removals are a key part of this whole situation.’”<sup>27</sup>

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<sup>25</sup> Star News Services. “Canada In Brief: Caplan to stem tide of Chinese migrants.” *Windsor Star* (Windsor, ON). April 1, 2000, final edition.

<sup>26</sup> *The Gazette* (Montréal, QC). “Immigration minister off to China.” April 15, 2000, final edition.

<sup>27</sup> Jason Proctor and Adrienne Tanner. “Chinese deported: 90 migrants, smuggled to B.C.’s coast last summer, flown home.” *The Province* (Vancouver, BC). May 11, 2000, final edition.

The procedures introduced to process the migrants and their refugee claims were extraordinary, to say the least. The claims procedures enacted were exceptional on several counts—their accelerated, expedited nature (DAARE 2001, 17; Mountz 2003, 274), the mass preventative detention implemented, and the effective group processing of the claims.<sup>28</sup> Many of the migrants were then subjected to a second form of group processing at the level of access to legal aid, in part due to funding cutbacks to the legal aid system in British Columbia. In a departure from the usual procedures of legal aid in BC, where one client would be assigned one lawyer, one lawyer would be assigned anywhere from 80 to 100 of the Fujianese migrants' cases at once.

A key governmental tactic introduced to delay access to legal counsel in the first place was the government's exceptional designation of the processing center and military base holding the migrants as Ports of Entry into the country.<sup>29</sup> The Esquimault military base where the migrants were first processed was officially designated a Port of Entry rather than a site of detention to give CIC access to the migrants for as long as possible (up to 14 days) without legal counsel, during which time the maximum amount of information was elicited from them to be later used against them in their claims hearings and detention reviews (Mountz 2003, 274).<sup>30</sup> This raises serious questions around the migrants' access to due process.

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<sup>28</sup> Lawyers and advocates for the Fujianese migrants have argued that the exceptional and expedited legal procedures applied to their cases amounted to a form of group profiling and processing (DAARE 2001, 2). In other words, the migrants were largely judged as a group rather than as individual claimants, violating the basic principals of the UN refugee convention to which Canada is a signatory.

<sup>29</sup> Since the Supreme Court ruling in *Dehghani v. Canada* (Minister of Employment and Immigration) (1993), refugee claimants are not entitled to a right to counsel during their admissibility and eligibility interviews at a port of entry, as they are not deemed to be hearings but routine information gathering exercises. Claimants are therefore not considered to be detained while in a port of entry (Galloway 1997, 218-19).

<sup>30</sup> Mountz notes that immigration officials strategically employed what they called "the long tunnel thesis" through this designation, likening Esquimault to the long tunnels of an airport that must be walked upon



Based on their categorization as flight risks, the mass preventative detention of the migrants prompted the government to reopen the previously closed Prince George Correctional Centre. Instead of being heard at the Immigration and Refugee Board (IRB) in Vancouver as is the standard practice, refugee hearings for the migrants were held in temporary, makeshift tribunals in remote prisons in Prince George and Burnaby, with IRB members flown in for hearings which the detained migrants attended in handcuffs and prison garb (Mountz 2003, 275). The exceptional nature of these policy and procedural responses were enacted in ways that reconfigured the temporal and spatial norms of juridical governance. Accelerated claims proceedings were combined with lengthy detention terms, while juridical spaces embodying the nation-state and its administrative tribunals were elasticized and shifted to sites well outside of their customary locales. Ultimately, the acceptance rate for the refugee claims of the migrants who arrived by boat ran between 2.5 - 4.5%, dramatically lower than the 58% overall acceptance rate for refugee claimants from China in 1999 (the second-largest source country of refugee claims) (275).<sup>31</sup>

Recent theories of governmentality (Dean 1999) argue that policy operates through a process of *problematization*, through the constitution of a “problem” at the level of the “population” as a privileged object of governance in a way that prescribes specific strategies of intervention. Policy rhetorics claim to describe reality, yet this description is

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arrival prior to reaching customs. These governmentally constructed “no man’s land” limbo spaces are liminal, disciplinary zones that effect a curious disjuncture between the physical and the juridical status of a national territory. In other words, one is not officially landed or considered to be on Canadian soil juridically despite being so physically (Mountz 2003, 274).

<sup>31</sup> One lawyer with whom I spoke who had acted as legal counsel for several of the migrants on an advocacy basis noted a serious discrepancy between the acceptance rate for those migrants who were represented by legal aid in a group manner, and the significantly higher rate of acceptance for migrants who were represented by advocate lawyers in much smaller numbers. Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal QC-Vancouver BC).

implicitly bound up with prescription. Analysts of immigration policy commonly argue that a major factor that shapes how immigration policy is formed and transformed is the way in which the “problem of immigration” is defined and configured in specific conjunctures (Schain and Edwards 1994). Is it framed as a problem of human trafficking, of terrorism, of population growth, of the labor market, or all of these at once? What is the implied or explicitly proposed solution that such a framing suggests? Different framings and forms of problematization configure and invite different policy responses and practices of governmental intervention. Ultimately, news events are major sites where this framing and problematization process is articulated and circulated in the public culture.

Theories of governmentality also analyze the dispersion of policy effects beyond the narrow field of government into the wider culture. Rejecting any definitive demarcation between the inside and outside of government institutions, theories of governmentality focus on the discursive regularities and the dispersion of policy effects beyond the narrow field of government into the wider culture. They analyze, trace, and seek to intervene on the “transactional relations between political formations inside and outside the state apparatus” (Allor and Gagnon 1994, 27).

At this juncture, it is also worth drawing upon and recasting Agamben’s formulation of the state of exception as a central feature of biopolitical forms of government (the latter of which will be further elaborated in Chapter 4). Following the work of Carl Schmitt, Agamben (2002) argues that the biopolitical operations of sovereignty within liberal democratic forms of governmentality are secured by a range of partial and temporary practices of exception from their own juridical rights regimes and legal democratic norms. The most extreme form culminates in the state of emergency and

suspension of constitutional law as an outside that both constitutes and demarcates the spaces of the liberal democratic norms of the nation-state. In the next chapter, I will consider recent postcolonial critiques of both Agamben's account of the state of exception and Foucault's account of biopower in light of what Mbembe (2003) calls colonial necropolitics (Osuri 2006). Following these critiques, I emphasize the routine and constitutive nature of these exceptional practices in settler nations such as Canada, against accounts that would frame them in provisional or anomalous terms. Yet for the purposes of the current account, Agamben's notion of the state of exception can be productively mobilized to elucidate the mechanisms through which the biopolitical cleavages of state racism mark out and target racialized migrant bodies with differential, exceptional practices from the democratic ideals simultaneously espoused by nation-states (Perera 2002).<sup>32</sup>

Drawing on such approaches, I want to emphasize the particularly forceful trajectories of governmental power that run between the news media and state immigration policies in media events such as the one that played out in the Summer of the Boats. These trajectories of governmentality that were crucial in producing the exceptional practices that were leveled at the Fujianese migrants. The transactional relationship between the news media and CIC was a powerful, overdetermining one that dispersed and reverberated outward into the wider public culture through the circulation of the news event.

Indeed, the news media served as the medium and site of problematization of the Fujian migrant boat landings in terms of human trafficking, and it is worth underlining

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<sup>32</sup> See for instance, Perera's analysis of the migrant detention centre at Woomera, Australia as emblematic of an intensified though increasingly common space of exception (2002).

the extent to which that problematization was not only discursive but also a highly affective process. The widespread circulation of phemes and statements regarding “porous borders” and “human cargo” in the media created the momentum for this problematization driven by an affective sense of threat to the population.

Most theories of governmentality tend towards a strict focus on political rationality and the governmental logics of policy discourse while neglecting the affective dimensions of governmental regulation and its dispersion through media culture into the everyday common sense of national belonging. Hier and Greenberg (2002) also read the news coverage of the Fujianese boat landings as a form of problematization of Canadian immigration, but they do not account for the affective modes of that problematization. Instead, they frame the news coverage as a strictly discursive crisis. This leads to an overly mechanistic account that fails to consider the overwhelming but never totalizing effects of the affective work of the media, nor the potentials inherent in the affective counter-currents that they generate.

While the immigration ministry was undoubtedly the focal point and fulcrum in the governmentality of the Fujianese migrants’ fate, the dispersion of governmental power and rule was clearly at work in the response to boat landings. Multiple government departments were called upon to coordinate a response to the landings in concert with CIC. This included a coordinated enforcement response between CIC, the Coast Guard, the RCMP, and the Department of National Defense (DND), all of whom played a significant role in the tracking and interception of the four boats. A DND military base at Esquimaux was used as the temporary “Port of Entry” and CIC processing site (security provided by the RCMP). Corrections Canada prison facilities were used for the detentions. As noted, legal aid awarded contracts to lawyers to provide legal

representation to the migrants in their claims.<sup>33</sup> Other non-state actors who impinged on the governmentality of the event included non-governmental organizations (NGOS) such as the Red Cross, the “outraged Canadian public” generated and interpellated by the media event, and advocacy and activist groups who mobilized to support the migrants (such as the Vancouver Association for Chinese Canadians, and DAARE). In addition, a persistent sense of insecurity circulated regarding hidden or illegitimate sources of governmental rule, encapsulated in the mediated anxieties of a phantom governmentality over the lives of the migrants and ultimately the nation by the snakeheads and smugglers themselves.

The transactional relationship between the CIC and the news media operated on several levels. In response to the media furor that triggered CIC workers’ self-described “crisis management” mode, the Communications Branch was mobilized and foregrounded as the most powerful department of CIC in managing the response. Mountz describes an elaborate dance between journalists hungry for statements and CIC communications employees staging press conferences and other media rituals (2003, 261). The Communications Branch of CIC effectively and proactively took over the regulation of the public image the department was attempting to package in response to the crisis. Enormous resources were channeled into the Communications response, which in many ways effectively overtook the operational response to the migrants (landing, processing, detention) in terms of strategic importance and energy invested. The entire chain of command shifted during the crisis, with the Communications branch screening and approving the decisions taken by other branches running the operational response to the

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<sup>33</sup> It is important to note that over 100 migrants were not covered through legal aid, and that this had a disproportionate bearing on unsuccessful claims (Mountz 2003, 276).

migrants, what one employee described as the “tail wagging the dog” (Mountz 2003, 150). The need to craft a cohesive image and coherent message through the production and regulation of strategic phemes became a central preoccupation of CIC’s response in their attempts to reverse or at least stave off the affective force of the media furor.

The effective governmentality of a media message and its core mediaphemes is the domain of communications and PR professionals, and several typical communications techniques were employed. The press conference is the central ritual through which the news media transact with any organized communications response. Here what Foucault would call the “order of discourse” is acutely at work regarding who is brought forward and prepared to speak for an organization or government department, who is authorized to act as a spokesperson (typically communications employees), while front-line CIC workers were required to remain silent and defer to the communications experts. “Talking points” were routinely prepared for the press conferences and media interviews, offering pithy discursive encapsulations of the main message strategized by the Communications branch. The other central technique is the press release, which McGinnis found to be one of the major sources cited by the news media, often directly (2001, 7).

Major efforts to “phemify” CIC’s key messages were expended through the preparation of strategic sound bites to repeat to the media. Coaching and training in the proper mediaspeak, how to encapsulate the key message in the catchy sound bite and then repeat it in every sentence spoken, how to “stay on message” and avoid “going left” (or “off message”), how to strategically “spin” and “massage” the affective momentum of the media—all of these professional media skills operate through practices of self-government that are crucial to effective mediaspeak. This self-governing performance of

mediaspeak also demands a kind of affective self-management, as one CIC put it: “And then your spokesperson...goes before the cameras...It’s really important that they project images of knowledge, of understanding, and don’t get riled, don’t get emotional...” (Mountz 2003, 148).

Perhaps most telling of the affective pressure and amplification that the media event wrought in the everyday life of the immigration bureaucracy was the spiraling expansion of routine work tasks regarding the media, particularly the daily news clip reviews. It is telling of the crucial importance placed on the regulation of its media image that all CIC employees start their days with a review of the news clippings of all media coverage the department received the previous day. Even in a non-crisis period, the morning clips require all CIC workers to consider how the department is portrayed in the media. During the event around the boat landings, the media climate completely hijacked the day-to-day work routines of the department. As one interviewee put it, “In all my nineteen years of service I had never lived anything like it...a period like that where there was that kind of focus and pressure and stress in the organization” (142). What would start as the routine morning review of the news clippings would expand into the full day as a result of the volume and nature of the clippings, and the response required to manage the affective flow of the coverage. As Mountz notes, one negative item could send the office into chaos (147).

You would start in the morning. And you just completely become fixated on one issue only...you do your clips first. Your media focus and attention goes from being 20 minutes to...[several hours or the entire day]...You’d read about what the media said about you yesterday...[and] if they didn’t get it right...that becomes part of your work for the day (147-8).

“Public opinion” is another classic site where the relations of reciprocity between the government, the media, and the public converged in ways that exerted intensive

governmental pressures on CIC and the state as a whole. In particular, the media's strategic use of opinion polls during the news crisis around the boat landings served to bolster and amplify the affective climate of anger and reactive hostility. Here, Stabile's (2001) caution about the conflation of public opinion with the industrial production of public opinion through polling firms (Ekos, Angus Reid, Léger et Léger) and the media's commissioning of polls is germane. Many of the most alarmist headline phemes were produced through the press' direct citation of polls in headlines presented as though they were channeling the direct voice of the people ("ENOUGH!"<sup>34</sup> "Go Home"<sup>35</sup>). The affective spiral unleashed only served to reinforce the impression of a transparent voice of the people being given expression through its magnification and resonance with the building momentum of the news event.

In this way, a self-reinforcing and circular ventriloquism was established and echoed between the larger affective climate produced by the news media, the media's commissioning of polls from polling firms based on selective questions shaped by that affective climate, the industrial production of poll results, and the media's selective citation of those poll results in ways that escalated the affective spiral. As one advocate lawyer I have spoken with put it, "It all became very self-reifying. The media kept quoting itself over and over again until it became a reality."<sup>36</sup> The self-reifying nature of the media's own auto-citational practices is key to how the amplification spiral escalates. This self-citing ventriloquism of the polls successfully produced a forceful pheme of a unified and direct *vox populi* (voice of the people). In this way, polls come to play a performative

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<sup>34</sup> *The Province* (Vancouver, BC). "Enough Already! It's time to toughen the law." September 1, 1999.

<sup>35</sup> Cindy E. Harnett. "Go Home." *Times Colonist* (Victoria, BC). August 15, 1999.

<sup>36</sup> Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal, QC-Vancouver, BC).



role in the production of the very thing (public opinion) they claim to be an expression of. The performativity of opinion polls during the Summer of the Boats both fed off and amplified the affective climate of backlash and outrage.

Yet the media's problematization of the migrant landings had already been set in motion, leaving a governmental department, initially at least, responding reactively to the driving force of the media coverage. The governmental response became completely driven by the media climate unleashed. The preoccupation with media relations/communications and the way it overtook the operational response meant that enormous energy and resources were invested into the government's effort to regulate the production and circulation of mediaphemes and statements (*énoncés*) about the event. An arsenal of communications and public relations techniques were mobilized in attempting to manage the phemes and statements in circulation while seeking to strategically unleash new phemes and framings that the CIC could regulate and control. This excessiveness and over-responsiveness to the media was tied to the overwhelming affective impact the news event had in generating a sense of crisis for the government. It was the media and its powers of amplification as much as the migrants that became the crisis for CIC.

On the other hand, there is a sense in which the media's amplification spiral around the boat landings offered certain governmental agencies and agendas within CIC and more generally the perfect opportunity to assert a stronger, "tougher" political response of closure with respect to the migrants. Rather than experiencing a uniform sense of crisis or disempowerment by the news media, the extent to which key governmental officials, from the Communications Branch to the enforcement side of CIC, not only fell into step with, but in many ways, fed and utilized the predominant affective and discursive thrust of the media coverage is significant here. One lawyer who

was closely involved in representing several of the migrants at the time emphasized the degree to which the Communications Branch had successfully managed and spun the media to publicly legitimate the enforcement response being put into place:

CIC did an amazing job of manipulating this entire story. I was involved in representing a group of migrants who went on a hunger strike to protest immigration policies in the early 1990s. At that time, the CIC was so disorganized about how to manage the media. They didn't know what hit them. Now move the clock forward to the Fujianese in 1999, which I have some basis to assess. They were very smart. They knew what they were doing. They spun very well. They fed very well. They did a superb job of managing their side of the story on this issue. It was very difficult for advocates to spin back, because they didn't have access to the individuals. CIC was very effective in getting its spin out on this. They created this sense of a heightened threat, so that they could then show why there was a heightened response. There were certain motifs they ran over and over, very successfully. They had good media people, they spoke off record, they spoke to news cycle, they knew how to deliver to news cycle much better. They were good at manipulating the national stuff. They were effective in framing the issue, keeping the frame that they wanted. They would not let the community people break the frame. And in media that's everything.<sup>37</sup>

These comments adeptly capture the mutually reinforcing transactional relationship between the news media and government in producing the exceptional policy response to the boat landings that was soon implemented.

Another layer of this complex and self-reinforcing transactional relationship between the news media and governmental policy played out in the juridical process that became part of the governmental response. Lawyers representing many of the migrants in detention hearings and during their claims process were familiar with what one referred to as "that notorious book of documents" that CIC prepared after the arrival and subsequent disappearance of most of the migrants from Boat 1. "It was notorious...all the lawyers knew it, all the lawyers would say, oh yeah, that book." This was a standard book of documents used by detention officers in every detention review from Boats 2-4. Among

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<sup>37</sup> Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal, QC-Vancouver, BC).

the documents were several of what the same lawyer referred to as “inflammatory,” “tabloid” news articles on the boat landings. The government’s use of these articles are significant here not only for the ways in which news media documents come to constitute legal evidence and reinforce policy practices, but also for the ways in which the predominant media discourses came to shape and frame the legal process. According to that lawyer, these media discourses were very present in the hearings.

There was all this kind of rhetorical language that kept weaving itself into the detention hearings [based on the news articles]...it was all filthy this, and rusty that, the horrible conditions, the predatory snakeheads. The inhumane conditions [played up in the media] were a big motif in the detention reviews. It was almost like detention was there to protect them from themselves...regardless of the fact that they don’t want this protection from themselves, they want to be out. So part of it is, we’re helping you by detaining you. But the other part is, we’re helping ourselves by detaining you.<sup>38</sup>

The intense media focus and the affective pressure it exerted on CIC for a “tough” response produced the ultimate course of action taken by the department: the spectacle of mass detention and deportation as a visible response and resolution of the affective crisis generated through the media. The timing of successive policy measures undertaken by Minister Caplan and CIC in April and May of 2000 was not accidental—the Minister’s tabling of a new immigration act with “tough” new anti-trafficking measures, her diplomatic mission to China to discourage trafficking and obtain documents that would render many of the migrants deportable, and the subsequent mass deportation of migrants on a charter plane—all framed by a carefully planned and orchestrated public relations effort. CIC responded to the media attacks on its public image as the lax guardian of a leaky national body with the spectacle of migrant bodies caged, chained, contained...and ultimately removed. Even some of the immigration

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<sup>38</sup> Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal, QC-Vancouver, BC).

officials interviewed about the event have stated that this exceptional disciplinary spectacle of deportation was bound up with CIC's own need to re-establish and renegotiate its public image through the media (Hier and Greenberg 2002; Mountz 2003, 160). The mass circulation of mediaphemes of invasion and illegitimate entry were closely tied to this uneven regulation of borders through an irregular, exceptional determination process and a disproportionate, repressive enforcement response.

The news event around the boat landings served to produce a new problematization of Canadian migration as a crisis of human trafficking and transnational organized crime, a problematization that led to the formulation and implementation of new anti-trafficking discourses and measures in the new Immigration and Refugee Protection Act introduced as Bill C-11 by Caplan in April of 2000.<sup>39</sup> CIC workers caught in the midst of the media crisis spoke of experiencing a policy vacuum, of the need to invent "policy on the fly" (Mountz 2003, 159). "And we have been, in British Columbia, the cutting edge of it all...with the two largest removals in the history of immigration in these past few months. We are witnessing things that have never happened before..." (159).

Yet the vacuum was not so much a product of the migrant's arrival in and of itself, as Canada daily receives greater numbers of migrants through airport arrivals. Nor is it unique historically.<sup>40</sup> Rather, the vacuum and subsequent scramble to produce policy on

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<sup>39</sup> It should be noted that Canada's problematization and introduction of anti-trafficking measures played a role in and responded to a larger global problematization of human trafficking as a migration interdiction issue. Also in 2000, the United Nations adopted the *Palermo Protocol against transnational crime and the smuggling of migrants*. François Crépeau has argued that the criminalization of migration flows framed as a security threat for Western nations has led to the extension of the borders of interdiction and exclusion into wider and wider regional buffer zones (Crépeau 2003).

<sup>40</sup> Apart from earlier historical incidents such as the attempted landing of the *St. Louis* carrying German Jewish refugees from Nazi Germany who were turned back in 1939 or *Komogata Maru* in 1914 (the latter to be further examined in the coming chapters), other notable boat arrivals include the landings of 155 Sri

the fly was largely an outcome of the affective spiral of furor and intense pressure exerted by the media in response to the boat arrivals as a more camera-ready mode of entrance. Ultimately, this policy “on the fly” included mass detentions and deportations of an exceptional and unprecedented nature and scale. As we shall see, these proved to be the exceptions that would become the new rule (with the measures introduced in the new IRPA).

The extreme and highly pitched nature of the affective climate produced by and through the news media event around the Fujianese migrants in 1999 was crucial to the exceptional measures put into place by the government in response, an exceptionality that worked to deny and circumvent the most basic forms of legal and procedural due process that constitute the formal promise of liberal democracies. As DAARE (2001) has argued, “You need to create the perception of crisis to strip away legal rights. The media has been complicit in this...” (18). The exceptional nature of the governmental response and denial of due process permeated every stage of the event: from the militarized interception of the ships, the denial of legal counsel through the unprecedented declaration of a military base as a Port of Entry, to the mass detention of the migrants as flight risks in reopened prisons, to the expedited claims process and mass deportations. The intensity of the affective spiral and racialized discourses produced through the media event drove this radical denial of due process that led to the caging and removal of the Fujianese migrants under the guise of “protection.”

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Lankan Tamil refugee claimants in 1986 and 174 Sikh refugee claimants in 1987 on the eastern coast of Canada. The latter case also touched off a media storm that led to an emergency recall of Parliament and the introduction of Bill C-84 (see Chapter 5) (Kelley and Trebilcock 1998, 264, 417).

### 3 Outlaw Discourses: *People are not a flood, borders are not God-given*<sup>41</sup>

However, the governmentalization of news events along existing and tendential lines of force (Slack 1996), even in such intensified and repressive forms as the governmental response to the Fujian Boat landings, is never the last word. Governmental lines of force always generate lines of flight, and this is particularly so in the heady and intensified climate that such spectacular news events produce. The everyday actors and social movements that propel these lines of flight construct their own counter-discourses and affective momentums that challenge and contest the terms and framings of the dominant discourses. These are what Ono and Sloop (2002) term “outlaw discourses,” discourses that are “not simply disagreements or conflicts” within the terms of the prevailing governmental discursive formation, but that “represent a position incommensurable with dominant positions...[one that operates outside the terms of] litigation and arguments within governing structures providing logics of ‘governmentality’” (15).

The activist lawyer cited previously emphasizes the extent of this incommensurability in speaking of the power of the prevailing governmental frames in the media coverage of the boat landings, of how effective CIC was at maintaining the frame that they wanted in the media. As he put it, they made sure that community activists were unable to “break the frame.”<sup>42</sup> Part of the challenge and tension posed for community activists supporting the detained migrants in attempting to break the dominant media frames had precisely to do with this incommensurability between the

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<sup>41</sup> Excerpt from the poem “Illegalese: Floodgate Dub” by Wayde Compton, dedicated to the Chinese migrants and included in DAARE’s report on the Fujianese migrant women (DAARE 2001, 24-25).

<sup>42</sup> Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal, QC-Vancouver, BC).

outlaw discourses they sought to publicize and the predominant governmental and media frames. As we shall see, once the dominant media frame became entrenched, activists found that the mainstream corporate media would only pick up on those aspects of their message that fell within the terms of the existing governmental discourses, whereas anything that fell outside of those terms would be excluded from media coverage.

One instance of the difference between outlaw discourses and conflicts within the terms of the dominant logics of governmentality would be the highly contested debate and differing stances adopted towards the spectre of the “bogus refugee” by autonomous anti-deportation activists (such as DAARE) and much of the traditional, non-governmental organization (NGO) networks of refugee advocates. Whereas many NGO-based refugee advocates, both during the Summer of the Boats and since, have contested the harsh treatment meted out to detained migrants, many nevertheless implicitly and explicitly reinscribed the figure of the bogus refugee, subscribing to the notion that the Fujianese migrants were economic migrants rather than true refugees. In contrast, anti-deportation activists have tended to reject such a stance based on the principal that “no one is illegal,” fundamentally contesting the terms of statist constructions of borders and illegality. Such an outlaw stance embraces a deeper questioning of the legitimacy of the discursive policy categories of immigration policy that underlie the distinction between “authentic refugees” and “bogus economic migrants,” particularly in the context of “the increasing scale of unauthorized migration [since the early 1990s that]...is at least in part a direct response to the ravages produced by neo-liberalism” (Fernandez et al. 2006, 472).

Yet even when activists supporting the migrants chose to focus on more modest demands, such as a fair process for the detained migrants, those aspects of their message

that fundamentally contested the terms of the governmental frames in the media tended to be excluded from media coverage. As one activist with Direct Action Against Refugee Exploitation (DAARE) put it,

Many of us believed in a much different system, a different way of treating people who come to Canada, different analyses around migration, but at this point, we were really just focusing on a fair process [for the migrants]. I don't even think our message was that radical in some ways. To some, sure, but in the end, it was not that radical.<sup>43</sup>

DAARE was an autonomous group of women in Vancouver who, along with the Vancouver Association of Chinese Canadians, became one the most active and vocal activist groups to contest the governmental treatment of the Fujianese migrants. The group came together in the aftermath of the boat arrivals in September 2004, focusing particularly on advocating for the 90 Fujianese women detained at the Burnaby Correctional Centre for Women and the Prince George Correctional Centre. Two of the co-founders of DAARE have noted the extent to which the affective climate produced by the media prompted them to respond: "As a Chinese person who grew up here, it certainly resonated with me...After the first group of people arrived, I was following the media, and I was really incensed by the characterization—it was just illegal, illegal, illegal, everything was illegal, everything was bogus."<sup>44</sup> Another DAARE activist noted a similar response to the media coverage that led to her involvement:

I remember the first I heard of it, I was just walking along the street...and I saw the headline, and I just thought, 'Oh oh, there's trouble.' But I didn't know at that point how much I was going to get embroiled into the whole situation...I think what mobilized a lot of us initially was just the sense that this can't be happening. You know, the kinds of headlines that were going on...things like "Go home," and the discourses of disease and illegality.<sup>45</sup>

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<sup>43</sup> Interview with DAARE Activist, July 26, 2004. Vancouver, BC.

<sup>44</sup> Ibid.

<sup>45</sup> Interview with DAARE Activist, July 22, 2004. Vancouver, BC.



DAARE's actions included direct support work for the detained migrants, weekly demonstrations and public actions such as solidarity fasts in front of the IRB, public education and community forums, media actions and advocacy, lobbying, detention visits, and a publicly released report critiquing the government's policy response to the migrants (DAARE 2001). (The final policy recommendations of the report are included in Appendix 2.)

Over the course of their activities, DAARE worked to develop and publicize a series of counter-discourses to the governmental framing of the migrants, outlaw frames that challenged the terms set out by the corporate media. As DAARE's report, *Movement Across Borders: Chinese Women Migrants In Canada* (2001), put it: "The contexts of economic polarization, political and gender oppression, and globalization were virtually excluded from the media" (14). Firstly then, one of the key counter-discourses that DAARE sought to put forward was a transnational, global economic framing of migration that foregrounds Canada's role in an unequal and highly unjust global economy. In part, this frame is historically rooted, foregrounding Canada's settler colonial role in the theft of First Nations land and ongoing denial of aboriginal self-determination (Churchill 1992), along with the history of anti-Asian sentiment and Chinese exclusion in Canadian immigration policy. But the emphasis was also on Canada's current role in promoting neoliberal economic policies and projects in countries such as China, highlighting development projects such as the Three Gorges Dam that the Canadian government and corporations have sponsored and profited from through the Canadian Export Development Corporation (20). DAARE sought to break the criminalizing framing of migrant movements by underscoring Canada's role in producing poverty and economic

displacement that create the conditions for such migrations, along with smuggling and undocumented entries in the face of restrictive immigration laws skewed against the poor.

A second outlaw discourse that DAARE put forth was a contestation of the illegality frame that became so entrenched in the media. They sought to draw a fundamental distinction between undocumented migration and the governmental construct of illegality they rejected. DAARE argued that the mass detentions constituted a form of racialized group profiling (2001, 2), and sought to undo what they called the government's rhetorical guise of "protection" by placing the detentions in the context of the prison growth industry. Through such a lens, undocumented entries into Canada are framed as tactics of flight from displacements wrought by global economic disparities, and as compensatory strategies in the face of the racialized, classist, and gendered biases of Canadian immigration laws (4). DAARE's report focuses particularly on the racialized and gendered nature of the point system, that makes it impossible for impoverished women from the South and East to qualify as independent class immigrants (18-20). DAARE's counter-discourses also reverse the terms of many of the operative metaphors of Canadian border control, arguing that "when the front door is too narrow, people are forced to go through the dangerous back door" (3).

It should be noted that there was some internal debate within DAARE regarding the predominant trafficking discourse that coalesced over the course of the Fujian migrant media event. Some members of the group subscribed to aspects of feminist anti-trafficking politics that may have taken issue with the terms of governmental anti-trafficking discourses, but that nonetheless still foregrounded trafficking as a central problem to be contended with. Others felt it was necessary to prioritize a wholesale rejection of the

governmental account of the snakehead threat to vulnerable women and children.<sup>46</sup> Nandita Sharma, an activist with DAARE who has since published several scholarly analyses of the event, has recently argued based on her interviews with the detained women that the smugglers who organized the migrants' arrival were not powerful snakeheads linked to global criminal triads, but were in fact small business owners similarly motivated by poverty (2005, 95).

In the face of media portrayals of mute, chained migrants and/or scheming, abusing migrants whose testimony could not be believed, a final outlaw frame that the women of DAARE insisted on was the centering of the migrants' voices and narratives as a crucial starting point to grasp the gendered realities and embodied impacts of their migration and subsequent detention. This insistence, when combined with the prevailing media climate and the migrants' incarceration and eventual deportation, carried numerous dilemmas and difficulties, and was not an easy or transparent process. This points to many of the larger tensions and dilemmas of visibility and mediatization that arise in confronting the multiple and colluding forms of erasure and invisibility that undocumented, non-status migrants are subject to.

Throughout the media event around the boat landings, the activists of DAARE continuously confronted what they called "the Catch-22 of trying to address the corporate media" (DAARE 2001, 15). They encountered a tension between the urgent need to publicize the gravity of the migrants' situations in the face of their criminalization and desubjectification, and yet faced what they characterized as the extremely limited analysis and damage wrought by the selective and partial coverage that the corporate

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<sup>46</sup> For more on this debate from the point of view of a former DAARE activist who has developed a significant critique of feminist anti-trafficking perspectives, see Sharma (2003; 2005).

media largely gave (15). They also faced the dilemma of not wanting to speak for the migrants, yet feeling an urgent need to use the access and physical freedom denied to the migrants to facilitate the circulation of their voices and situations (7). As one of the DAARE activists put it,

The difficulty was, these weren't our stories to tell. And if we told certain stories out in the public...like the media [would say] 'Bring us the women to talk about it.' Well, immigration is just going to nail them. And that's what we saw happen a lot. There wasn't really any safety or protection for them, and the media certainly wasn't going to provide it. They were interested in the big...these stories...and a particular story they had in their mind about what these women's lives were about.<sup>47</sup>

Another of the DAARE activists referred to the media coverage as a barrage and a "self-perpetuating circle" in which "speculation and innuendo would be reported on as fact." In the face of this, DAARE sought to engage the media strategically while also understanding the limits of such work: "We tried to be strategic, knowing that's the terrain. You either choose not to work with it at all, or you figure out how to engage with it on its grounds. But it was never satisfying and it was always frustrating. I think we did it out of a sense of duty, but also out of a sense of how freaking limited that is."<sup>48</sup>

Engaging the corporate media on its grounds, of course, involves engaging the governmental frames that prevailed in the media event. This meant that the outlaw frames that DAARE was seeking to publicize would rarely get picked up, and were largely left out of the coverage. As one of the DAARE activists explained:

We would make this one page press release, and what would get picked up, and what would be left out, you could almost predict ahead of time...So things that would get picked up would be...'We think these women deserve a chance to stay...They've had really hard lives...' you know, that kind of stuff. But the other part of that [which would be left out] is...'Our wealth in some ways is a theft. It's stolen.' You look at cheap labour overseas or here. You look at a number of the

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<sup>47</sup> Interview with DAARE Activist, July 26, 2004. Vancouver, BC.

<sup>48</sup> Interview with DAARE Activist, July 22, 2004. Vancouver, BC.

women [who stayed] here who are working in garment factories. They're doing piecework...they're underpaid, less than minimum wage in some cases.<sup>49</sup>

Another of the DAARE women interviewed noted that the effects of the exceptional procedures that were imposed on the migrants—which DAARE sought to publicize—remained uncovered by the corporate media:

The media picked and chose what they found were interesting stories. And they certainly didn't...no one really delved into things. They would probably if we really fed them some of the women, and we weren't willing to do that. Because it wasn't our lives at risk at that point. But they certainly didn't critique things like... you know, we talked about the cuts to legal aid, we talked about the shipping of people to Prince George and how that affects their ability to participate in refugee claims. We talked about how the accelerated process through the refugee determination system was impacting very negatively on them. And that wasn't something the media...[ever decided] to explore...further.<sup>50</sup>

Apart from the selectivity on the part of the corporate media regarding which aspects of DAARE's message would get picked up, there were several other external barriers to the possibility of getting the women migrants' stories into the media in a manner that would not place them at further risk. The fact that the migrants remained in detention, fearful for their safety should their identities be publicized, was already a serious constraint. But CIC and Corrections Canada further manoeuvred these constraints to intensify the factors preventing the migrants' voices from being heard. One incident recounted by one of the DAARE activists illustrates the docility of the media in acceding to governmental tactics to prevent the voices of the migrants from being heard:

One scenario was that [of] this woman who was quite vocal. She was willing to speak very publicly about her treatment by CIC. And it was going to take place after her detention review. And her lawyer was there....After the hearing, CIC officials whisked her out and said it was for her own protection. That's what her lawyer was there for. And the media just gave it a little line. That was how disinterested the media was in challenging Immigration [Canada].<sup>51</sup>

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<sup>49</sup> Ibid.

<sup>50</sup> Interview with DAARE Activist, July 26, 2004. Vancouver, BC.

<sup>51</sup> Ibid.

Another instance attests to the complex levels and layers of governmentality that converged to prevent the detained migrants' voices from being amplified or even heard in the media at all. In this case, it was Corrections Canada that restricted prison access to the media as part of a governmental effort to manage the frames and restrict the counter-discourses able to circulate in the media. As one lawyer for several of the migrants explained:

By boats 2 and 3...as DAARE was organizing and getting better, then there was the ability to counter the CIC spin. Because the CIC spin couldn't work as well, because now there was a counter-narrative to deal with, and these were the voices of the actual individuals...They [CIC] didn't know how to spin that. So then prison access started to get weirder...So you started to see complex stuff playing out. I'm not saying that the prison system was complicit with CIC, that they had a little meeting and talked it through. But I think there were these different ways in which...you know, every time a counter-narrative got out there, it was a little harder for them. So they started making it harder to get the word out, in terms of cutting off access. I think near the tail end of it, they weren't as successful. But certainly for Boats 1 through 4...the first six months of the news cycle, they were very, very successful. But as we got into the 3<sup>rd</sup> and 4<sup>th</sup> quarter of the story, they were less able to manage it.<sup>52</sup>

In the face of the cumulative barriers that colluded to prevent the voices of the migrants from being heard, the DAARE activists sought to find ways to facilitate possibilities for the migrants to speak out on their treatment in ways that gave them agency in determining the risks they were prepared to take (something that simply "feeding them" to the media would not have done). They insisted on centering the voices of these migrant women, not through any naïve belief in a transparent or unified voice of experience (Scott 1991), but because doing so strongly challenges the predominant media discourses and governmental accounts regarding their migration. Furthermore, DAARE's insistence on focalizing the migrants' accounts as a crucial starting point for any political

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<sup>52</sup> Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal, QC-Vancouver, BC).

response to their movements can be understood as part of a larger political project foregrounding the relative autonomy and negotiated agency of migrants undertaking migratory projects regardless of statist constructions of borders. As Sharma (2003) argues, “by centering the standpoint of undocumented migrants a more transformative politics emerges, one that demands that people be able to ‘stay’ and to ‘move’ in a self-determined manner” (53).

DAARE activists conducted interviews with the women during detention visits, as well as maintaining ongoing communication and letters exchanges with them as part of their support work. Significantly, the women’s narratives produced in collaboration with DAARE foreground the embodied impacts of their treatment and detention. In particular, they give insight into the sometimes brutal forms of affective control and regulation that prison authorities subjected the detainees to, responding to overt forms of emotive and often traumatic expression by the detainees with punishment. This was confirmed by the United Nations Special Rapporteur on the human rights of migrants who visited the detainees, who reported that they were routinely isolated if they were deemed to become “too emotional” (Pizarro 2000, 14). Prison protests (dubbed “riots”), several suicide attempts, and multiple rounds of hunger strikes as particularly embodied forms of protest became the sole tactics of resistance and flight left for many of the migrants during their long months of detention.

The narratives that emerged fundamentally complicate and challenge the governmental account amplified through the news media event, particularly the discourse justifying the government’s actions as a matter of “protection” for the migrants. As one Fujianese woman incarcerated in Burnaby put it: “I never thought that I would risk my life to come to Canada to end up in prison for an indefinite term. Canada is a country

that speaks of human rights and protection for women and children. I never thought that it would mean this kind of ‘protection’” (DAARE 2001, 12).

The activists of DAARE invested considerable political work in facilitating a different kind of public presentation of the migrant’s narratives than the melodrama or sensationalism typically employed in media testimonials. Their aim in so doing was to counteract the impacts of what Yann Moulier Boutang (2004) calls the socially organized invisibility of migrants, foregrounding instead their active contestation of the treatment they received. This chapter closes with the Fujianese migrants’ narratives gathered by DAARE, as they convey with power and presence all that the media and governmental accounts did and would not...

*This never-ending imprisonment is driving me close to an emotional break down. (DAARE 2001, 8)*  
*I have been in prison for more than eight months now. This long period of incarceration has been horrible for my physical and emotional health. I cannot remain locked up like this. (DAARE 2001, 9)*

*During the recent fortnight, a woman [name deleted] who came with me on the boat, went mad from being in prison. But the guards said that she was faking the madness. The first time she lost her mind, not only did the guards not take care of her, they even barked at her to shut up and then they had her locked into a room. When we went to comfort her, the guards told us that whoever gets close to her will also be locked up. After a few days of this, [she] had another attack... Every time [she] felt ill she would plead with the guards... that she wanted to rest, but the guards would ignore her and have her locked up. (DAARE 2001, 9)*

*There were a few who had a riot in Prince George and broke the TV, the thermos, the table. The reason was because they were in a bad mood. They wanted to talk to each other and were not allowed. They burst into tears and were not allowed to cry. Then they were very angry and started to break things. That happened in April 2000. Another person was asked to bring a chair somewhere, but put it in the wrong place and was placed in solitary confinement for one day. There were over 20 women in Prince George. Over 10 of us were in one room. Over half of us have experienced solitary confinement... (DAARE 2001, 11)*

*We are the women from Fujian province who came to Canada to seek refuge. In China, we were persecuted under the one-child policy. Since the day we arrived in Canada, we have been locked up in prison. It has already been one year and two months, and we don't know how much longer we will be kept in jail. Therefore, all of the women incarcerated at the Prince George Regional Correctional Centre have decided to start a hunger strike today, in order to protest our continued imprisonment...*

*This long imprisonment is tormenting us mentally and psychologically. We often burst out into hysterical*



*laughter or tears. We are on the verge of mental break down. We are being treated like criminals and inferiors. Meanwhile, we are afraid of being sent back to China as we know we will be imprisoned and subjected to torture and fines. We are caught between imprisonment imposed by the Canadian government and persecution from the Chinese government. Either way, we feel miserable and hopeless... We want freedom!*

*—Statement from the Chinese women incarcerated in the Prince George Regional Correctional Centre (DAARE 2001, 7-8)*

**STATE RACISM AND THE HISTORICAL VIRTUALITIES OF EXCLUSION**

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**1 Animating Exclusions: Continuous Journey**

The celebratory mythos of Canadian progress that lies at the core of liberal democratic and nationalist narratives of the nation celebrate the elimination of explicitly racialized policies from immigration policy in the 1960s as the end of racism in Canadian immigration and its opening to the world (CIC 2000a). In his 2004 documentary *Continuous Journey*, Ali Kazimi employs an innovative aesthetic that animates archival material to perform and revisit the notorious Komagata Maru event of 1914. The Komagata Maru was the ship that challenged the Continuous Journey regulation of 1908 that effectively halted South Asian immigration to Canada for over 50 years. Facing a near absent visual archive, Kazimi employs haunting animations of the few remaining archival images of the event to actualize this buried history of exclusion. Kazimi's excavation of the Komagata Maru through these strange, ghostly animated figures poignantly show that the explicitly exclusionary immigration policies in this period of eugenic racism always coexisted with policies such as the Continuous Journey regulation that produced equally exclusionary effects in a less overt, virtualized form.<sup>1</sup> *Continuous Journey* traces the connections between the past and present by illuminating the continuities between the interdiction policy measures that constitute the Continuous Journey regulation of 1914 and the recently passed *Canada-US Safe Third Country Agreement* of 2004. The abolition of overtly racialized

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<sup>1</sup> A virtualized form that is no less real in its racialized effects.

policies in the 1960s did not amount to the end of racism in Canadian immigration—these virtualized policies of exclusion persist into the present.

Kazimi situates the Komagata Maru as the first ship carrying migrants in history to be turned away by Canada. In fact, prior to being sold to the Japanese, it had been used to transport thousands of European immigrants to Canada without incident. The Continuous Journey regulation passed by the Canadian government in 1908 stated that migrants could only arrive to Canada by a continuous journey with no stop-overs—designed to prevent South Asian immigration in particular. The Sikh businessman Gurdit Singh chartered the ship to sail from Japan fully cognizant that it would be challenging the Continuous Journey regulation, carrying 376 predominantly Sikh, as well as Muslim and Hindu migrants from India who had been left stranded in various Asian port cities by the regulation. A ship that was barred from landing amid inflammatory media reports of “Hindu Invaders,” marooned in Vancouver Harbour as the mechanisms of administrative exclusion amassed, confining and starving the ship’s passengers until they were forced to turn back and sail to India.



Figure 4.1: The Komagata Maru, Still courtesy of Ali Kazimi

Based on Kazimi's intricate primary historical research, *Continuous Journey* unfolds the story of the political and legal quagmire that the Komagata Maru sailed into when it arrived in the Vancouver Harbour in 1914, along with the forces and actors who constructed and contested it. Marooned in the harbour for 61 days while its passengers were held incommunicado with dwindling supplies and increasing desperation, the film traces the complex of legal and extra-legal manoeuvres the Canadian government undertook (including attacks by a navy vessel) to turn the ship away without ever allowing it to land or any (save two) of its passengers to disembark. Ultimately, Kazimi shows how the migrants were turned away based on a racialized legal distinction drawn between subjects of the British Empire and their legitimized movements through the empire.

The film retraces a genealogy of the British imperial subject that evocatively connects the history of racialized exclusion in Canadian immigration policy to the larger transpacific, transnational movements and circuits of empire. Exclusionary policies in Canada, the violence of the British imperial project in India, the fate of the migrants on the Komagata Maru, and the incipient anti-imperialist, diasporic resistance of the North American-born Ghadar party<sup>2</sup> are shown to be intricately linked through a layered narrative that shifts spaces and temporal frames to trace the global routes and forces that trapped the ship in a legal no-man's land. Such a transnational lens allows a buried legacy of anti-imperial resistance by members of the local British Columbian South Asian community connected to the Ghadar movement to come into view, one that simultaneously challenged the Continuous Journey regulation, British imperialism, and exclusionary communalist tendencies in India. Tragically, it is the imperial authorities' fear

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<sup>2</sup> The Ghadar Party was a secular organization founded in the United States and Canada in 1913 and was a keen advocate of the anticolonial movement in India.

of the growing influence of the Gadhar movement that sealed the fate of the Komagata Maru's passengers, who become targeted as threats to the empire on both sides of the Pacific.



Figure 4.2: Still from *Continuous Journey* of Prime Minister Robert Borden and Burrell, Courtesy of Ali Kazimi

The virtual poetics of *Continuous Journey* enact a critical and volatile excavation of these shadow histories of exclusion, actualizing their virtual and suppressed legacies and continuities. Rob Shields notes that the relationship between the virtual and the actual is a close one, the passage from one to the other involving a constant movement of virtualization and actualization. He argues that the virtual can be actualized through performative acts; actualization is performative, “an inventive drama” (Shields 2003, 285; Deleuze, 1988, 101). In *Continuous Journey*, a form of non-mimetic actualization surfaces through Kazimi’s *animation* of archival stills. Brian Massumi argues that the virtual does not appear in static form or inherent content, but in the movement between samples, in “the twists and folds of formed content” (Massumi 2002, 133). In this sense, the practice of animation itself is exemplary of the virtual, the transition between static images creating a sense of movement within the interstices. It is in *Continuous Journey*’s animation of these rare, decaying archival images, the creation of movement between these static, faded

archival stills put into motion, that the specters of this exclusionary, racialized history appear. Through its haunting animations and painstaking performative reconstructions, *Continuous Journey* powerfully actualizes the virtualized exclusionary histories and effects of Canadian immigration policy in the context of transnational migration flows and movements shaped by empire.

The formal strategies adopted and hauntingly enacted in *Continuous Journey* are not incidental to the aesthetic and political dilemmas posed by the effaced histories of exclusion that the film confronts. Indeed, the plays of absence and presence, the layered use of animated images to create a virtual space of emergence for buried histories whose representational traces have been neglected or destroyed, the tactical creation of a virtual archive of sorts—all become necessary strategies insofar as they capture, mimic, and actualize the virtual operations and workings of racialized exclusions in Canadian immigration practices. In this way, the poetics of virtuality deployed in the film evoke the historical formulation and contemporary operation of exclusion in Canadian immigration and refugee policy.<sup>3</sup>

Kazimi's focus on the unmarked, virtualized nature of the exclusions enacted through the Continuous Journey regulation, and his emphasis of the continuities between this historical provision and contemporary forms of racialized exclusion in immigration policy, are not incidental to one another. The coming two chapters elaborate on these historical continuities by offering an account of the centrality of such implicit, virtual forms of policy exclusion to the celebrated "race neutral" immigration policy reforms of the

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<sup>3</sup> This mobilization of the notion of virtuality in relation to Kazimi's *Continuous Journey* and migration policy, more generally, arose out of an ongoing conversation and several collaborations with Ayesha Hameed. I am indebted to her for first drawing my attention to this "non-digital" notion of the virtual in its resonances with the themes of the film. For the fully elaborated analysis of *Continuous Journey* that builds on these passages, see Hameed and Vukov (2007).

1960s, as well to the ongoing, increasingly virtualized forms of exclusion in present day immigration policies.

Indeed, settler nations such as Canada, built through colonial settlement, immigration and “the centuries-old dream of populating Canada’s vastness” (to quote the *New York Times*<sup>4</sup>), have developed sophisticated governmental techniques for the biopolitical regulation of population through immigration policy. The coming two chapters focus on a key transition in Canadian immigration policy that was crucial to the emergence of a biopolitical state racism operational today: the abolition of explicit racial restrictions in the immigration policy of the 1960s in favor of economic criteria. I will argue that, rather than the abolition of race and racism as factors in Canadian immigration policy, which is how this era is typically celebrated in progressive narratives of the nation (Vukov 2003b), this period represented a transition from an era of explicit eugenic racism in earlier 20<sup>th</sup> century policy to a rearticulated biopolitical state racism and sexualization in post-1960s policy (see Chapter 5). This biopolitical reframing of the population rearticulated racialized and other forms of exclusion along much more implicit, virtualized lines. This has resulted in a contemporary biopolitics of immigration that operates through a range of virtualized exclusions more so than explicit forms of exclusion.

In order to move to a fully elaborated account of the contemporary biopolitics of migration that I offer in Chapters 5, 6, and 7, my aim in the coming chapter is three-fold. Firstly, I develop an account of the operations of state racism in immigration policy by delving into and recasting elements of the Foucauldian literature on biopolitics and

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<sup>4</sup> Krauss, Clifford. “Canada Courts Migrant Families to Revive a Declining Hinterland.” *New York Times*. October 2, 2002.

governmentality. Secondly, I consider two prior historical formations of Canadian immigration policy that continue to inform the contemporary biopolitics of migration, and that help to account for the transition from explicit to virtualized forms of exclusion: the settler colonial necropower (Mbembe 2003) that shaped the emergence of early immigration policy, and the eugenic state racism of the early 20<sup>th</sup> century. Finally, focusing on the Continuous Journey regulation among other provisions from Section 38 of the *Immigration Act* of this latter period, I show how virtualized forms of exclusion were first mobilized in this phase of eugenicist immigration policy in ways that formed a crucial antecedent to the policy reforms of the 1960s that I turn to in Chapter 5.

## **2 State Racism: Biopolitics, Governmentality, Population**

This section considers how theories of biopolitics and governmentality can be drawn upon and recast to illuminate the historical trajectories and contemporary workings of Canadian immigration policy and politics. While theories of governmentality are helpful in foregrounding the modes of problematization of Canadian immigration policy as discussed in Chapter 3, this theoretical focus is expanded in the coming pages to engage theories of biopolitics that offer a richer account of both the operations and the co-mingling of post-sovereign and sovereign forms of power in the regulation of immigration. In particular, the inherent role of *state racism* to biopolitical forms of regulation will be considered and shown to be central to historical and contemporary formations of Canadian immigration policy.

Governmentality theorists consider the 18<sup>th</sup> century Enlightenment science of *police* to be the basis of contemporary post-sovereign forms of policy. *Police* emerged as a



governing practice of constitutive abstraction (Bacchi 1999, 47), in which the *population* was constituted as an object of knowledge and at the same time prepared as a target of political intervention (Pasquino 1991, 108). Policy operates through problematization, through the constitution of a social “problem” such as poverty or immigration in a way that suggests specific strategies of intervention in the very configuration of the problem—in other words, through a strategy of simultaneous constitution and prescription towards an object of knowledge (defined as a “problem”). Policy is a technology of governance, one that is not restricted to instrumental procedures externally imposed upon its subjects in a strictly repressive manner, but that shapes the wider norms of social conduct through the dispersion of discourses beyond any narrowly defined range of government authority. Governmentality theory also focuses on the constitutive role policy plays in producing the subjectivities of those who are its target. In this respect, Canadian immigration policy plays a key role in regulating immigration status—in determining which subjects will be produced as immigrants or refugees, and who becomes produced as undocumented or non-status.

In Chapter 3, I discussed several limitations of theories of governmentality, particularly regarding their tendency towards a strict focus on political rationality and governmental logics without taking into account the affective dimensions of governmental regulation and their circulation in media and public culture. For this and several additional reasons that I consider in the pages to come, I have sought to expand the theoretical scope of this project beyond the useful but limited purview of theories of governmentality, turning to some of the broader and more evocative elements of recent theorizations of biopolitics as they might be brought to bear on migration politics in Canada. Whereas governmentality theories tend to restrict their scope to the abstract,

discursive rationalities of governmental discourses and practices in a narrow sense, theories of biopolitics allow us to ask broader questions about the inscription of governmental practices within larger political projects based on specific modes of managing populations. They also foreground the inscriptions of various practices of state racism, economic, and sexual regulation within the governance of population. In this section, I explore and offer a consideration of the contributions and limitations of theories of biopolitics with an eye to recasting them in terms of the specific concerns of this project regarding the historical and contemporary regulation of Canadian im/migration.

Following Rabinow and Rose (2003), I concur that the some of the most widely discussed and commented upon theories of biopolitics, those of Hardt and Negri and Giorgio Agamben, are limited for my purposes insofar as they proffer either overly broad or overly limited renderings of biopolitics which do not adequately account for the constellation of social forces (economics, state racism, sexuality) that I am grappling with. Hardt and Negri (2000) deploy an extremely broad notion of biopolitics as a pervasive “form of power that regulates social life from the interior” in contemporary modes of global power under empire (23). Such an all-encompassing conception of biopower loses important traces of the specific and more modest ways in which Foucault initially theorized it. On the other hand, Agamben (2005) focuses so strongly on the deathly face of biopolitical violence through sovereign power and its negative limit in the figure of “bare life” that he neglects the ways in which the “bio-” of biopolitics, its focus on human life and life processes, are central to the political interventions it undertakes. For the purposes of this project, I will be staying close to the short and fairly fragmentary theorizations of biopolitics in Foucault’s later works and lectures, with additional forays into such theories of biopolitics as those of Lazzarato (2004), Terranova (2004), Virno

(2002) and Mbembe (2003) to deepen and extend this analysis in a manner that is productive to the aims of this investigation.

In *Il faut défendre la société* (1997), Foucault's concern with the question of population is based in his larger argument about the emergence of biopower as a transformation of the classical model of sovereign power. Whereas sovereign power was based on the model of seizure and deductively exercised around the right to put to death ("de faire mourir ou de laisser vivre"), post-sovereign power is productively exercised through technologies of life ("le droit de faire vivre") (214). The 18<sup>th</sup> century was a key turning point in the transition from the older juridical form of repressive power, modeled on the right of the sovereign to put his or her subjects to death, to a normalizing biopower based on the administration and optimization of the life of the population.

To understand how Foucault configures this transition from sovereign power to biopower, two elements of his methodological approach are significant here. As Ann Laura Stoler (1995) argues, contrary to how he is often read, Foucault was not only concerned with questions of historical rupture and discontinuity in the transition from one episteme to another, but also with the recuperation and reinscription of past discourses in the emergence of new ones. The analytic tension in his work between rupture and reinscription, the methodological predicament presented by "recodification as a problem of the present" (63) demands careful attention to the recovery of older discourses and the ways in which their effects are altered in new discursive and governmental regimes (61, 63). In *The History of Sexuality, Volume I* (1978), Foucault refers to both *interferences* and historical *retroversions* to describe this process of reinscription in the passage from one regime of power to another (149-50). It is significant that the two forms of retroversion Foucault focuses on in the passage from the sovereign symbolics of blood

to the post-sovereign analytics of sexuality are that of psychoanalysis and racism (the second of which I will return to).

A second noteworthy element in Foucault's approach to post-sovereign power is his emphasis on the coexistence of two different regimes of power in what he calls post-sovereign societies of normalization. In addition to disciplinary sovereign power that centers on individual bodies (the aspect of his work that tends to be highlighted in much Anglo-American theory), Foucault argues that postsovereign power conjoins the disciplines with *biopowers* of regulation that work at the level of the mass or population ("une...prise de pouvoir qui n'est pas individualisante, mais qui est massifiante" (1997, 216)). Biopower serves to bring life and its mechanisms into the realm of explicit calculation, deploying knowledge-power as an agent of intervention into human life (1978, 143). In the *Birth of Biopolitics* (2000), Foucault argues that biopolitics emerged in the 18<sup>th</sup> century as an endeavour to "rationalize the problems presented to governmental practice by the phenomenon characteristic of a group of living human beings constituted as a *population* (health, sanitation, birthrates...)" (73). Deployed through the governmental administration of this mass body, biopower is expressed through *regulation* rather than repression, through the elaboration of a complex series of regulatory measures that seek to modify, optimize, and achieve an equilibrium or homeostasis in the life processes of the population. Governmentality can be understood in relation to these regulatory measures, as the techniques and procedures of directing and governing human behavior in the framework of state institutions and biopolitical regulation (74). More broadly, governmentality involves any activity (rather than strictly institutions) that seeks to direct "the conduct of conduct" across a range of objects from the micro to the macro scale—from the state, to the population, to the household, to the self.

Until recently, Foucault's emphasis on governmental power and regulation was often neglected in writings that focused only on his theories of micro-power (though the two are closely connected). Foucault argues that sexuality serves as a key point of articulation between these two regimes of individualized bodies and "massified" population, between the disciplines and biopolitical regulation (1978; 1997). In the post-sovereign societies of normalization that result, norms (along with statistics) become central as techniques of dispersion between biopower and the disciplines. Norms circulate from the regulatory conduct of the population to the individual body. One instance from recent Canadian immigration selection policies is the highly discretionary criteria of "personal suitability" on the basis of which immigration claimants were until recently awarded or refused 10 points (out of 100) in the point system. After years of objections by critics that such criteria had more to do with the discretionary judgments of immigration agents based on Western/Canadian-based social norms than on any possible objective measure of "good character," the personal suitability factor was amended in 2002 under the new *Immigration and Refugee Protection Act* to become what the government argues is an "objective" adaptability factor. Yet this ostensibly objective factor of adaptability continues to be formulated according to such normative criteria as the educational level of an applicant's spouse or common-law partner, family relationships in Canada, or previous employment or study in Canada (Government of Canada 2001).

Population is the key object of emergence on which these biopolitics of life and death intervene and act. Foucault accounts for the new regime of biopower in the late 18<sup>th</sup> century through the "apparition d'un nouveau élément," "un nouveau personnage," "un nouveau corps multiple": the population as both a biological and political problem

(1997, 218-9). Here we have a new collective phenomenon<sup>5</sup> (as opposed to the individualized discipline of juridical power), a mass, biologized body that calls for and puts into place a whole set of regulatory mechanisms charged with its maintenance and health. The governmental imagining of the population as a mass, biologized body operationalizes these regulatory health mechanisms. The technologies developed to regulate the “état de vie de la population,” range from statistics, to public hygiene, to intervention into birth and mortality rates. Of course, immigration policy constitutes a key regulatory mechanism of the population in modern liberal nation-states (Bigo 2002; Ceyhan and Tsoukala 2002).

Much of the established governmentality literature tends to focus on the classical concerns of political economy and policy (Dean 1999, Lazzarato 2004; Virno 2002), while tending to background questions of sexuality and racism (with notable exceptions, such as Stoler 1995). I want to argue that the mutual inscription of neoliberal economics, racism, and sexuality into the mechanisms of the state is crucial to any consideration of contemporary modes of biopolitical regulation of immigration.

In the well-known final chapter of the *History of Sexuality, Volume I* (1978), Foucault focuses on sexuality as a critical point of articulation between the disciplinary regime of individualized bodies and the biopolitics of the “massified” population, a central locus of biopolitical regulation at the juncture of the “body” and the “population.” The link between individually marked bodies and the biopolitical body that is the population is one

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<sup>5</sup> Bruce Curtis (2000) has critiqued Foucault’s theorization of population as an object of governmentality, arguing that Foucault’s postulation of population as an 18<sup>th</sup> century discovery is historically inaccurate. I am less interested in debating historical periodizations or accuracy with respect to Foucault’s account of the historical emergence of population as an object of government. Rather, I want to consider how and to what extent these theorizations can be fruitfully brought to bear on Canadian immigration policy and politics, by considering the shifting ways in which population has been conceptualized and configured as an object of governance through Canadian immigration policy and politics.

that I want to underline as especially significant for this project, particularly with respect to the role and marking of migrant bodies within such a massified body politic. The final lecture from the relatively recently released *Il faut défendre la société* is particularly helpful here (Foucault 1997). In that lecture, Foucault also frames racism, specifically what he calls state racism, as indispensable to postsovereign societies of normalization. Amidst the technologies of regulation focused on improving the life of the population (or more accurately, *faire vivre la population*), racism introduces a *coupure* or gap in the biological continuum or species being of the population between those who must live and those who must die. Racism reinscribes the sovereign right to death into postsovereign governmentality through a logic of *security*, securing the life of the population by seeking the death of racialized bodies. Those who are racialized either as an external threat or an internal enemy, whose bodies hold out the threat of pollution or degeneracy, must be killed or contained in order to assure the life of the population. State racism marks the point of cleavage in the massified body that is the population between those bodies that are to live, and those bodies that are marked as threats to be targeted for elimination, containment or expulsion.

This emphasis on the *security* of the population,<sup>6</sup> combined with a generalized security logic dictating that “in order to live, one must kill” (ultimately culminating for Foucault in discourses of war), is useful for our purposes as it speaks strongly to contemporary and recently emerging governmental forms of regulating immigration.<sup>7</sup> I want to extend these initially fragmentary theorizations of biopolitics in Foucault’s work

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<sup>6</sup> For a detailed analysis of the governmentalization of security in relation to national imaginings and state practices, see Burke (2002) and Walker (1997).

<sup>7</sup> For a more comprehensive elaboration of the securitization of migration, see Bigo (2002) and Ceyhan and Tsoukala (2002).

and their take-up in contemporary theories of governmentality by emphasizing and building on several trajectories proposed by other theorists (Agamben (2005), Virno (2002), Lazzarato (2004), Terranova (2004), Mbembe (2003)) that are vital to the current modes of governmental power operative in what I will call a biopolitics of migration. In particular, several of these are concerned with the centrality and interrelatedness of communications/public opinion, virtuality, and affect in biopolitical forms of power.

While I have already noted my departure from aspects of Agamben's conception of biopolitics, in Chapters 2 and 3 I also drew on and recast certain aspects of his formulation of the state of exception as a central feature of biopolitical forms of government. My approach to the state of exception, somewhat paradoxically, argues against the "exceptionality" of these exceptional practices, regarding them as routine and constitutive in settler nations such as Canada. Their exceptional nature is not a matter of (a lack of) frequency or separation from everyday life, but relates to the ways in which these practices mark out and target elements of the population or circumstances for exceptional treatment from the formal norms or laws upheld by a given governmental or political system. In section 3, I will further consider postcolonial critiques of both Agamben's account of the state of exception and Foucault's account of biopower with respect to Mbembe's account of colonial necropower (2003).

Another aspect of Foucault's fragmentary theorizations of biopower that merits further critique regards his overly dichotomous account of state racism with respect to the split it creates between those parts of the population whose lives must be secured, and those who pose a threat and must be contained or destroyed. To adopt an overly simplistic rendering of this *coupure* or gap in the population would elide the ambivalences and complexities of historical and contemporary forms of labour migration, in which *non-*



*preferred* migrants tend to straddle and are alternately positioned on both sides of this population divide. In other words, since at least the turn of the 20<sup>th</sup> century, Canadian immigration policy has always had to accommodate the labour migration of “non-preferred” or “undesirable” migrants whose labour was nonetheless necessary to secure the nation (due to labour shortages, nation-building projects such as the Canadian Pacific Railway, economic growth). “Non-preferred” migrants are ambivalently positioned in such a biopolitics, insofar as their labour power is necessary to assure the life of the population, yet their bodies can at any time become framed or targeted as threats to the population (of which the historical instances are manifold).

Paolo Virno’s expansion of Foucault’s notion of biopolitics to encompass labour power is helpful in this respect. For Virno (2002), the body’s *potential* or *capacity* for labour (*force de travail*) is a central constituent force of biopower, at the same time that the body as substrate to this labour power becomes the object of innumerable strategies of governance and discipline (88-94). This split that Virno posits between the body’s capacity for labour power as a key resource of biopower, and the body as substrate to this dynamic power of *bios* (life) might be understood to underlie the ambivalent positioning of the labouring migrant body in a larger biopolitics of migration. On the one hand, im/migrant labour power is vital to the life of the population; on the other, labouring migrant bodies that are marked along ethnoracial and/or sexual lines become simultaneously targeted as threats to the population. The tension that Virno describes between the (undesirable) labouring body and the (desirable) bodily potential of labour power is partially managed in immigration policy through the category of temporary labour, which I will argue in Chapter 5 is produced through a biopolitics of precarity that marks the distinction between permanent and temporary labour migration.

Turning to the communicative realm, the works of Lazzarato and Terranova have also gone a long way in extending and enriching Foucault's conception of biopolitics to address the central role that communications, the media, and institutions of public opinion play in societies where biopower operates as a significant form of political power and intervention. Indeed, for Terranova (2004), the media events and informational flows put into play through this critical nexus generate and produce "communications biopower," in which the movements and flows of mediated images pack forces and momentums that are, crucially, *affective* in nature. Drawing on the work of 19<sup>th</sup> century sociologist Gabriel Tarde, Lazzarato (2004) also widens the scope of Foucault's reading of biopower by broadening the character and role that population plays as the central object of biopolitical intervention, extending it to encompass another range of functions in the form of a doubled figure: that of the *public*, of *public opinion*. He writes: "La population doit être saisie sous un double aspect. D'un côté c'est l'espèce humaine et ses conditions de reproduction biologiques, économiques et sociales, mais d'un autre côté c'est le Public, l'Opinion publique" (2005).<sup>8</sup> In this way, Lazzarato situates the *population* and the *public* (emergent from institutions of public opinion and the media) as two faces of the same central object of biopolitical power, a theoretical formulation that is evocative for the questions at stake in this thesis.<sup>9</sup>

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<sup>8</sup> "The population needs to be grasped in its double aspect. On the one hand, it is the human species and its biological, economic, and social conditions of reproduction, but on the other hand, it is the public, and public opinion."

<sup>9</sup> Lazzarato's writings are somewhat inconsistent and unresolved as to whether the nexus of *population-public opinion* constitute two faces of one mode of biopolitical power, or whether the public/public opinion constitutes a distinct form of power. Drawing on Tarde's work in his book *Les Révolutions du Capitalisme* (2004), he opts for the latter, and frames this distinct form of power with the somewhat unfortunate name of *noo-politique* as a third mode of power along with the disciplines and biopolitics that together constitute societies of control (85). However, in the most recent of his work that I was able to access, an unpublished lecture he gave in 2005 that was circulated as part of the *Actes du colloque "généalogies de la biopolitique,"* he refers to *population* and *public* as double aspects of biopolitical power as cited above. Since I prefer this latter formulation for the purposes of the current project, and because his positing of *noo-politique* as a separate

An important feature characterizing biopolitical modes of power is that they not only operate and act on the concrete and actual, but crucially, through and upon *the virtual* as well. Virtuality here refers not to the vernacular reference of cyberspace, but to the Deleuzian-inflected notion of a realm of forces and potentialities that do not take a visible, explicit, or sensory form but are nonetheless real, exerting real effects. Lazzarato argues that biopower intervenes at the level of virtualities, of potentialities, by intervening on events; “le pouvoir est l’action sur des actions possible, intervention sur des événements” (2005, 9).<sup>10</sup> For Deleuze, “The virtual is opposed not to the real but to the actual. The virtual is fully real insofar as it is virtual...Indeed, the virtual must be defined as strictly a part of the real object—as though the object had one part of itself in the virtual into which it plunged as though into an objective dimension” (1994, 209).

Many theorists have drawn upon and developed Deleuzian conceptions of the virtual in affirmative and transformative terms, in which the virtual is framed as the source of new political potentials. Elizabeth Grosz describes the virtual as “the space of emergence of the new, the unthought, the unrealized, which at every moment loads the present with supplementarity” (Grosz 2001, 78). While this reading of the virtual as a source of new potentials for transformative actualization is important, my approach here departs somewhat from this more utopian rendering by considering the virtual as a source of powerful potential for exclusion. As the coming pages aim to show, the virtual can also constitute a space of emergence for new practices and forms of exclusion, along with buried, shadow histories of exclusion that continue to haunt and inflect the present. This more critical rendering of virtuality is central to the forthcoming account of the incipient

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form of power from the biopolitical seems to rest on a mind-body distinction that I refuse, I have chosen to go with my preferred reading of the latter formulation.

<sup>10</sup> “Power is action over possible actions, of intervention on events.”

biopolitics of migration that emerged over the course of the 20<sup>th</sup> century in Canada.

I focus on two mutually reinforcing ways in which Canadian governmental immigration policies operate biopolitically on and through the virtual. To begin with, both historically and increasingly in the present day, specific immigration policies (interdiction policies, in particular) are formulated so as to regulate and limit virtualities of migrant mobility as vital fields of potential, as well as to act on potentialities of various sorts (often through a logic of preemption). Such immigration policies are formulated to impinge upon and regulate the capacity of specific populations to embark upon legitimized forms of movement.

This is particularly the case with interdiction policies, including those at work in both the Continuous Journey regulation and the *Safe Third Country Agreement* (see Chapter 6), which seek to regulate and limit potential movement, travel, and border-crossings in a pre-emptive manner. This may be done through specific rules regarding what forms of travel and which routes are deemed to be legitimate or illegitimate forms of arrival, as is the case with the Continuous Journey regulation that disallowed arrivals that required any stop-over in travel. It may also be enacted through sanctions or fines against transportation carriers (airlines, steamship lines) who transport undocumented migrants, through so-called “migration integrity officers” (as they are called by Citizenship and Immigration Canada) who intercept undocumented migrants at international points of departure. A third way interdiction policies operate is through directives to carriers to redirect routes of transport in specified ways, as with the directive issued in tandem with the Continuous Journey regulation that shut down all direct, continuous means of transport from the Indian subcontinent. In *Continuous Journey*, Kazimi shows how the Canadian government forced Canadian Pacific to shut down the only direct transport

line between India and Canada at the same time that it issued the Continuous Journey regulation. These virtual workings of interdiction policies operate through a preemptive and deterrent logic, seeking to deter and limit potential movements of people before they occur. By couching the language of policy in terms of administratively permissible forms of movement and travel, the racialized effects of limiting specific populations with respect to the movements they undertake from their lands of origin remain unnamed and unspecified.

The second intersecting sense of virtuality through which such immigration policies operate relates to the unmarked nature through which racialized and other forms of exclusion are enacted in policy.<sup>11</sup> As Radhika Mongia has written of the Continuous Journey regulation, these are policies that effect racial and other exclusions while leaving them “unnamed” in the letter of the policy text, enacting “a racist strategy without naming race” (Mongia 2003, 206). These virtual forms of policy exclusion will be closely considered with respect to both eugenic and biopolitical forms of state racism later in this and the coming chapter.

Finally, building on these virtual dimensions and operations of biopolitics, the place and work of affect in current modes of biopolitical power is critical to consider and take into account, particularly where matters of immigration are at stake.<sup>12</sup> To understand how regimes of security operate and become publicly normalized beyond the immediate sphere of governmental policy, we need to extend our analysis beyond the

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<sup>11</sup> Rob Shields (2006) notes that all social relations, including race and gender, have a virtual dimension, insofar as they are intangible (or at least cannot be limited to a tangible materiality) yet are “widely felt, defended, and held to exist” (284). It is my contention that it is precisely on and through the virtual dimensions of such social relations as race and ethnicity that these immigration policies act in order to effect the virtualities of exclusion that they do.

<sup>12</sup> Massumi (2002) argues that affect operates at the passage between the virtual and the actual, as the “simultaneous participation of the virtual in the actual, and the actual in the virtual” (35).

logics of government typically emphasized in the governmentality literature (Dean 1999). We need to consider the wider mediation and public circulation of political affect with respect to immigration, often through a sense of threat, suspicion, or fear (but just as often through a sense of benevolent welcoming or celebration (Vukov 2003b, Folson (2004))).

Such affective spirals play a key role in the production and performativity of public opinion as a governmental indicator and biopolitical artefact of the population, so often rooted in and circulated through spectacular media events. Public and popular affects both inform and are shaped by immigration policies, and it is in the interplay and *va-et-vient* between them that a governmentalization of affect is constituted in policy.<sup>13</sup> Indeed, political affect, in its popular, social and governmental forms, plays a critical role in shaping the modalities of (un)/desirability informing contemporary and historical constructions of desirable and undesirable immigrants that structure immigration policies of selection and exclusion. And as Chapters 2 and 3 sought to make clear, the political impacts of the affective spirals circulated and amplified through such news events as the Summer of the Boats play a crucial role in shaping the governmental outcomes of such events.

In governmental invocations of population in policy discourses and practices, “population” tends to act as a term of translation between the abstract rationalities of governance on the one hand, and the affective, embodied dimensions of immigration as well as the social relations that inform them on the other. Curtis (2000b) argues that “population” serves to configure social relations through “abstraction from the infinite variety that characterizes human subjects” (34-35). Indeed, statistical regimes rely on this abstracted frame of the massified population to convert human subjects and their

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<sup>13</sup> See Bigo (2002) on the governmentalization of insecurity in European immigration policies.

everyday social practices into abstract, quantified entities. This form of abstraction involves a process of governmental reification of demographic traits and administrative data (for example, *female, age 24, 50 points out of 100* in the independent class point system). The biopolitical constitution of a “massified body” forms the basis of political and governmental interventions into the population. These processes of abstraction and conversion effectively *virtualize* many of the social relations and processes that shape the population, rendering them implicit and often unnamed factors in the governmental constitution of the population.

For instance, in her analysis of the strategic role population plays in Congressional discourses about immigration policy in the United States, Phyllis Chock (1998) argues that population is employed as an ostensibly objective, scientific, abstract term in order to effect racialized and sexist policies without having to make explicit references to race and sexuality (171). According to Chock, population is mobilized as a strategic term for sexual and racial regulation via a scientific discourse of rationality that both abstracts from these effects and seeks to place them beyond politics. For instance, sexuality is endowed with a “neutral” veneer through the use of fertility statistics that operate as an effective mode of sexual regulation of the population. Similarly, appeals to the health or security of the population serve to rhetorically neutralize or abstract from the political implications of their accompanying sense of threat, which are often bound up with virtualized forms of race and sexuality.<sup>14</sup>

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<sup>14</sup> For instance, this can be witnessed in the recent mainstreaming of right wing discourses of immigration, such as the political discourse of Jean-Marie LePen of the *Front Nationale* in the French national elections of 2002. In his public speeches during the election campaign, LePen made much less explicit reference to race and immigration than he had in the past, focusing on the rhetorically more neutral discourse of security and crime to seek similar effects.

Yet, from the perspective of theories of biopolitics, the population is more than a strictly rhetorical trope or device in governmental policy debates. The population constitutes a social body, through which individual bodies are governmentally conjoined and massified. At the same time, certain bodies are demarcated from others as threats to the larger social body, through the mechanisms of state racism that run through and fissure this mass body.

I want to foreground two key interrelated features of Canadian immigration policy with respect to the particular mechanisms of state racism in Canada, both of which are bound up with the history of the formation and sedimentation of the exclusionary apparatus that emerged at the turn of the 20<sup>th</sup> century to shape the course of future population growth with respect to a growing immigrant influx. The first has to do with the role of the *Immigration Act as framework legislation*. The second is related to the key role of administrative *discretion* as a form of diffused and distributed sovereign power.

In order to do so, it is important to contextualize immigration policy with respect to its legal and juridical status. As of the most recent *Immigration and Refugee Protection Act* that came into effect in 2002, Canada has seen six immigration acts in its history as a nation-state: in 1869, 1906, 1910 (with significant amendments in 1919), 1952, 1976, and 2002 (in addition to two separate *Chinese Immigration Acts* in 1885 and 1923).

Governmental policies such as immigration policy are situated within particular juridical lineages that trace their legitimacy to constitutional sources of governmental and legal authority. There is a governmental continuum that runs between the *Immigration Act* and legislation, immigration policies and regulations that are passed by Parliament, and administrative practices that tend to be codified in practice-oriented immigration manuals. This confirms the insights of governmentality theory into the permeable



boundaries between law, legislation, policy, and administrative practice, which is particularly relevant to the governmental regulation of immigration. Just as most legal texts frame immigration legislation and law as components of immigration policy, Marianne Constable (1993) has also argued that immigration policy works through the transformation of law into policy: “insofar as modern states generate ‘laws’, those laws are ‘policies’” (253). The enshrinement of immigration policy into legislation is the outcome of an extended process of policy consultation and agonistic parliamentary contests, in which the “winning” discursive policy frame becomes endowed with the authority of legislation. The quasi-legal status of immigration policy is rooted in its intermediate status, as a discourse of translation between what Gusfield (1984) distinguishes as “[the textual discourse of] Law and [the everyday practice] of law.”

Furthermore, most immigration policy as practiced in Canada is governed by administrative law, an area of law in which the statutory granting of broad discretionary powers to administrative authorities plays a particularly central role. Administrative practices must be able to be traced to a legislative source of authority based on discretionary roles delegated in the *Immigration Act*. If they fail to do so, they can be deemed to be legally *ultra vires* (beyond the terms of delegated authority) (Galloway 1997, 84).<sup>15</sup> In many ways, this subjection of the governmentality of immigration to administrative law is a de-politicizing gesture. Many of the legal appeals available to immigrant or refugee claimants are decided on purely procedural grounds, based on whether they have followed formal principles of administrative justice (i.e. natural justice

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<sup>15</sup> Increasingly however, immigration policy practices are also being subject to such competing areas of law as human rights law through Charter challenges (Galloway 1997, 47). Yet, as Galloway notes, efforts to subject immigration law to Charter challenges have met with much less success than other areas of law (such as criminal law), highlighting a marked judicial reluctance to subject non-citizens to human rights legislation (47).

or procedural fairness) rather than any sort of substantive justice. As Harriman (1995) notes, the bureaucratic rhetorical style—which governs the formal practice of administrative law—prioritizes the bureaucratic, rational rule of law over the political and affective in a manner that seeks to exempt it from political commentary (171). Several of the specific modalities of state racism in Canadian immigration policy stem from this governmental tactic that seeks to insulate immigration policy from politics and matters of substantive justice.

For instance, starting with the *Immigration Act* of 1906, which not coincidentally first implemented formal racial restrictions in immigration policy (see section 4), Canadian immigration legislation has been formulated as framework legislation. This means that the legal framework of the *Immigration Act* is quite vague, serving to lay down broad principles. A key legal function it serves is to delegate discretionary authority to the executive and administrative officials of the Department of Citizenship and Immigration—a critical function of sovereign power that has tremendous implications for the immigrant and refugee claimants over whom immigration officials exercise sovereignty. The majority of specific criteria for the selection of “desirable” immigrants and exclusion of “undesirable” claimants are articulated in the immigration regulations, which are formulated by a small cadre of Cabinet and administrative officials, generally without formal recourse to parliamentary or public debate.

The structuring of immigration legislation around the dispensation of *discretionary* authority to the executive branch of government and administrative officials that was first introduced in the Immigration Act of 1906 continues to this day. This enormous empowerment of the executive and administrative branches operates through the legal construct of *discretion* as a means to confer the mystical status of legal authority (Derrida

1990; Cover 1992) upon administrative officers. As Anna Pratt (2005) argues, while traditional liberal approaches have tended to frame the rule of law in opposition to discretionary power, the latter of which tends to be presented as an absence of government, discretion in such domains as Canadian immigration constitutes a productive, powerful form of regulation and a practical technology of governance in continuity with the law (53-57). Discretion in immigration policy functions through a mechanism of translation from the mystical authority of law (Cover 1992) to the daily world of the bureaucrat or politician, via a legislated system of distributed sovereignty. Discretionary powers of selection and exclusion are further dispensed to immigration agents in the CIC as well as to the Immigration and Refugee Board since its creation in 1989 (for refugee claimants and those appealing CIC decisions). This distributed and diffused system of discretionary power nonetheless flows upward towards the ultimate figure of sovereign power, the Minister of Citizenship and Immigration (who also exercises the authority to issue special ministerial permits to accept or deport immigrants and refugee claimants). Yet, as I show in Chapter 5 with respect to the introduction of levels planning on the recommendations of the *Green Paper* of 1977, the role of the *Immigration Act* as framework legislation and the system of distributed sovereignty it enacts have come to operate along increasingly post-sovereign biopolitical lines.

In order to track the emergence of this biopolitics of immigration in the 1960s along with the developing forms of state racism I have briefly considered, the remaining pages of this chapter examine two earlier formations of Canadian immigration policy that continue to inform the contemporary immigration politics examined in Chapters 5, 6, and 7. The historical traces of the settler colonial roots of immigration policy and the eugenic racism of the first half of the 20<sup>th</sup> century set the scene for the contemporary

biopolitics of migration on a number of fronts—from the governmental and policy sedimentations of an exclusionary immigration apparatus, to the historical remainders of the shifting ways in which population as a governmental object was constituted and managed through varying forms of sexual, racial, and economic regulation in each period. In particular, a consideration of the roots of Canadian immigration in colonization prompts a further theoretical claim regarding the tandem practices of biopower and colonial necropower in settler colonialism (Mbembe 2003; Osuri 2006). Another key argument I will develop concerns the extent to which the virtualized forms of exclusion that coexisted with more explicit exclusions in the earlier periods moved front and center with the celebrated policy reforms of the 1960s and the emergence of a newly articulated biopolitics of migration that I will examine in Chapter 5.

### **3 Settler Colonial Necropower and the Roots of Canadian Immigration Policy**

For nations that emerged from settler colonialism, such as Canada or Australia, founding projects of the nation rely on the colonial settlement of a long-term population. Such projects of population have specifically *settler* resonances. “Peopling the nation” (*le peuplement*) is a defining settler impulse that continues to shape the population imperatives of settler postcolonialism. This project of nation-building has been rooted in the necessity of attracting a long-term settler colonial population intertwined with economic nation-building.

From the outset, this colonizing project of population settlement set the parameters for the emergence and elaboration of immigration policy in Canada. A pro-natalist politics of fertility has played a key role in this project of peopling the nation. This

settler link between immigration and population settlement continues to be explicitly articulated in government policy, as I shall consider further in Chapter 5 (Hawkins 1972, 380-381).

Stoler, Mbembe, and others have already offered extensive critiques of Foucauldian theories of governmentality with respect to Foucault's lack of serious engagement with or consideration of the impacts of colonialism on the emergence of disciplinary and biopolitical societies in Europe. As Stoler (1995) shows, Foucault locates the emergence of a systematic regime of racism in the second half of the 19<sup>th</sup> century, along "axes that are *sui generis*" to a self-contained version of Europe (14). In neglecting to consider the colonial elaboration of technologies of racialized rule, Foucault fails to account for the direct links and co-occurrence of state racism and European imperialism (62). These shortcomings are worth brief consideration with respect to the settler colonial context of Canada.

In an important critique of both Foucault and Agamben's notion of the state of exception, Achille Mbembe (2003) argues that the notion of biopower is insufficient to account for the operation of state and governmental power in colonial contexts. Mbembe proposes the notion of necropower, "the subjugation of life to the power of death" (30), as a more theoretically precise term to account for the permeation of systematic, targeted violence, what he calls *death-worlds*, leveled at colonized, racialized populations in the context of colonial occupation. Furthermore, whereas for Agamben the state of exception functions as a temporary suspension of the juridical order in European nation-states (which may become permanent in such extreme cases as the Nazi death camp), Mbembe argues that, under colonialism, the state of exception is transformed into a permanent state of colonial law and its "civilizing" violence (13).

Mbembe's account of necropower is resonant with the operation and sheer scale of colonial violence visited upon indigenous peoples by the Canadian state, along with their subjection to a separate system of colonial law under the *Indian Act* (Chartrand 2002). Yet I would argue that biopower nevertheless became a central operative mode through which the settler population in Canada was constituted and regulated. The presence and articulation of both of these forms of power is tied to the specificities of settler colonial contexts. Just as Goldi Osuri (2006) has noted with respect to the Australian context (10-11), I argue that settler nations such as Canada have been constituted through combined practices of biopower and necropower, with the latter being foundational to the colonization of indigenous peoples while also being mobilized in practices of state racism targeting racialized/migrant peoples.

In a parallel fashion; the links between the violent colonization of the indigenous peoples of Turtle Island,<sup>16</sup> the colonial dispossession and settlement of their lands, and the emergence of Canadian immigration policy as a key extension of colonial population settlement are crucial. Immigration as a project of Canadian nation-building through permanent population settlement is embedded in this settler colonizing project and carries its sedimented traces to this day. The racial taxonomies and hierarchies that emerged in initial and subsequent phases of immigration policy were rooted in and elaborated out of this colonial project. This nation-building project has relied on a series of fundamental erasures and genocidal practices that were critical in defining the very contours of this externally constituted (non-indigenous) settler conception of the population. They include the founding myth of *terra nullius* (empty lands) that denies the presence of indigenous peoples and their cultures prior to European colonization, and the

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<sup>16</sup> Turtle Island is a widely used indigenous name for the North American continent.

myriad processes of internal displacement, land dispossession, violent extermination, and confinement (within the reservation system) that indigenous peoples were subjected to.

While it is beyond the scope of this project to trace the emergence of a formalized immigration policy in relation to the colonial policies imposed on indigenous peoples, the links between Canadian immigration policy and the *Indian Act* first legislated in 1876 are worth noting as an area that merits further research. Prior to and immediately following the institutionalization of the first comprehensive immigration policy in 1869, early immigration policy largely centered on the production of immigration promotion directed at attracting desirable immigrants from Britain and the United States as part of the project of population settlement, reaching its height under Minister of the Interior Clifford Sifton (1896-1905) (Vukov 2000). In this period, immigration policy had a largely facilitative role and was not yet focused on the exclusion of “undesirables” in this period, seeking to draw desirable emigrants from the colonial motherland.

As an extension of this settler colonial project, the emergent immigration policy in Canada entrenched a series of colonial displacements of *status* based on the necropolitical erasure of indigenous peoples. Through this colonial lens, those initially considered emigrants became preferred immigrants; colonial settlers became defined as the core of the population around which coalesced an emerging racialized formation of whiteness; and the two colonizing settler populations became designated and naturalized as the “founding nations.” This settler colonial politics of status has structured a differential juridical system of citizenship that continues to be operative today, based on whether one is a Canadian citizen (or British subject prior to 1947), a status or non-status Indian,<sup>17</sup> an

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<sup>17</sup> For more on the many unresolved political and juridical questions of recognition and status with respect to indigenous peoples in Canada, particularly the Métis, see Chartrand 2002.

immigrant or refugee of varying statuses (permanent resident, non-status), or a non-citizen. To this day, the articulation of unceded land struggles with the colonial practices meted out to First Nations peoples by the Canadian and Québécois state continue to contour a coercive, militarized necropolitics.

#### **4 Eugenic State Racism: Explicit and Virtualized Exclusions in Section 38 of the *Immigration Act* (1906 to the mid-1960s)**

In the period running from the end of the 19<sup>th</sup> century to the 1960s, a selective and exclusionary governmental apparatus of immigration emerged that was informed by a eugenic racism focused on social purity and the elimination of degeneracy. As Mariana Valverde (1991) has shown “eugenic ideas gave racist immigration policies a scientific veneer” and served to reinforce the links between “deviant sexuality, immigrants, and national degeneration” (107-108). An explicit ethnoracial hierarchy of admissibility governing immigration selection was introduced in this period, delineating preferred classes, non-preferred, and excluded classes. The sedimentation of racialized immigration categories rooted in the colonial citizenship status of “British subject”<sup>18</sup> gained a further scientific veneer through the use of eugenic scientific theories to rationalize these racial hierarchies that were entrenched in Canadian immigration policy into the 1960s.

The eugenic conception of the population that prevailed in the immigration policy of the time centered on techniques of racial selection based on hereditarian concerns, elimination of degeneracy (sexual, class, mental, and physical), and reproductive control (whether through immigration or “biologically”) to build the future population of the nation (McClaren 1990, 48-49). In 1901, medical inspection of immigrants was first

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<sup>18</sup> A distinctly Canadian citizenship status was not introduced until the *Citizenship Act* of 1947. Prior to that time, the legal status of Canadians consisted in the designation “British subject.”



introduced on eugenicist grounds, and conducted by doctors seeking to screen out the medically “defective,” the diseased, and the “feeble-minded” (49-57). As succinctly summarized by Mackenzie King in 1947, the eugenic approach to population that shaped this period focused on “preserving the [vitality and the] basic demographic characteristics of the population” through the screening out of undesirables (Kelley and Trebilcock 1998, 351).

This government of the population via the elimination of degeneracy and an overt project of engineered racial demographics and hierarchies operated along explicit lines. The closure and exclusions enacted towards prospective (im)migrants of “undesirable” ethnicities and races remains one of the most controversial elements of pre-1960s Canadian immigration policy. For instance, between 1892 until 1911, Chinese immigration was administered completely separately from the Immigration Branch under the Customs authority in the Department of Trade and Commerce, before it was integrated into the regular Immigration Branch of the Department of Interior in 1911 (Vukov 2000, 40). The most explicit set of exclusionary measures in this early period was installed through the federal *Chinese Immigration Act* of 1885. The Act sought to stem the flow of Chinese labourers after the completion of the Canadian Pacific Railway, introducing one of the first head tax measures along with limits on the numbers admissible into Canada. Yet at the beginning of the 20<sup>th</sup> century, a quarter of the labour force in British Columbia was of Asian origin (Whitaker 1991). The institutional and administrative segregation indicates the extent to which Chinese migration was not even defined as a matter of immigration policy, but as a separate stream of deportable migrant labour. This governmental distinction between immigrant and temporary migrant labour is a crucial marker that persists into the current conjuncture (see Chapter 5.4).

The eugenic form of state racism operative during this period also entrenched a gendered articulation of immigration and sexuality through a systematic targeting of degeneracy and circulated fears of “race suicide.” As Eithne Luibhéid (2002) has shown in the context of the United States, immigrant women’s sexualities have historically been viewed as threats to national security, and have been subject to strict legal and border monitoring practices through the mechanisms of immigration policy. Barbara Roberts (1988) has shown how the evolving social categories of sexual deviancy (from sexual “promiscuity”, prostitution, to homosexuality) became a central focus of deportation practices in early 20<sup>th</sup> century Canadian immigration policy.

This sexual regulation of immigration was effected through the governmentality of kinship, health, sexual conduct and deviancy in several ways. Firstly, the sexual and gendered regulation of national affiliation and citizenship operated such that, until the 1947 *Canadian Citizenship Act*, Canadian women who married non-Canadians would lose their status (as British subjects) and become alien residents (Kelley and Trebilcock 1998, 314). Secondly, an explicit regulation of sexual conduct and “deviancy” was enacted through the systematic medical screening of the sexually fit and unfit, along with mass deportations of those deemed to be prostitutes or homosexuals. There was a concerted and intensive supervision, surveillance and regulation of the sexual conduct of single immigrant women brought to Canada largely as domestic workers, and extra-marital sex was a not uncommon ground for deportation of these women (Roberts 1988; Kelley and Trebilcock 1998, 85; Luibhéid 2002).<sup>19</sup>

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<sup>19</sup> Indeed, as Kelley and Trebilcock note, the sexual monitoring of these women was strict enough that an amendment to the *Immigration Act* of 1892 specifically prohibited sexual relations between a ship’s officer or crew and female immigrants. In addition, matrons were mandated to supervise the women onboard the ships and special immigration agents were mandated to supervise them once they disembarked (1998, 85).

Finally, there was a prohibition for much of this period on the migration of women and children from populations defined as undesirable (through such measures as the various Chinese Head Taxes). The settlement of women from “undesirable” migrant communities joining predominantly male migrant labourers would signal the permanence of settlement and reproduction of these communities among the Canadian population. Instead, women from undesirable communities were often targeted and excluded via a specifically sexualized form of racialization that cast them in sexually deviant terms. For instance, during the Royal Commission on Chinese Immigration of 1884 (whose primary purpose was to restrict Chinese immigration), a British Columbian judge stated that “nearly the whole of their females who leave China are professed prostitutes, from children of ten or twelve years of age to old hags” (cited in Kelley and Trebilcock 1998, 96). What eventually became defined as family class immigration from non-preferred and excluded source countries was a constant source of anxiety, and thus became an explicit target of sexual and racial regulation.

Yet as Kazimi’s animated enactment of the Continuous Journey regulation’s challenge by the *Komagata Maru* powerfully shows, even in this period of overt eugenic racism, such explicit forms of exclusion coexisted with more implicit, virtualized practices of exclusion. Exclusion was codified in the letter and text of immigration policy in the restricted sense, but it also exceeded it—and it is this very excess that I want to focus on to raise questions about these nascent virtualized forms of exclusionary policies. By considering two articles of Section 38 of the 1906 and 1910 *Immigration Acts*, the explicit exclusionary apparatus of Section 38c and the non-explicit, virtualized interdiction policy of Section 38a (the Continuous Journey regulation), I will explore how these contrasting techniques of exclusion were enacted.

The emergence of the governmental structures of modern immigration administration in this period was closely tied to the articulation of a more systematic apparatus of exclusion. Exclusionary measures were implemented through the production of a range of inadmissible classes, along with the administrative apparatus of border inspection that was progressively installed through this era. As early as 1872, laws prohibiting certain kinds of immigration, particularly of the poor, criminals and the “vicious classes” (Galloway 1997, 10; Kelly and Trebilcock 1998, 62) were passed, and laws regarding the deportation of designated classes of immigrants appeared as early as 1889 (Knowles 1992, 89). However, the restrictions were few and not systematically enforced (Kelly and Trebilcock 1998, 63).

As Canadian immigration levels skyrocketed at the turn of the century with the sharp rise of mass labour migrations of the day, it was with the advent of Frank Oliver as head of the Department of the Interior that exclusionary policies were systematically articulated and legally enshrined in immigration policy. Oliver’s introduction of the *Immigration Act* of 1906, which effectively favored only Anglo-Saxon emigration, was the first legal mechanism for enforcing a comprehensive policy of restrictive immigration. The 1906 Act instituted the first formal deportation legislation, strongly expanded the immigration department’s powers, and significantly increased the categories of prohibited classes (prostitutes, the medically and mentally unfit), officially enshrining deportation measures for undesirable immigrants. According to Oliver, the Act’s prime objective was, “to enable the Department of Immigration to deal with undesirable immigrants” (cited in Kelly and Trebilcock 1998, 135). In this sense, the emergence of a formal immigration policy apparatus and system was closely bound up with the implementation of racialized,

sexualized and economic exclusions in ways that continue to inform the operations of immigration policy into the present.

Form B

### ORDER FOR DEPORTATION CANADA

THE IMMIGRATION ACT, SECTION 33

To \_\_\_\_\_ (Transportation Company)  
 and to \_\_\_\_\_ (Port of arrival—Name to bill)  
 of \_\_\_\_\_ (Last place of residence)  
 Port of Entry \_\_\_\_\_ Province of \_\_\_\_\_

This is to certify that the rejected person above named, a person seeking to enter Canada at this Port of Entry \_\_\_\_\_ Sup. or Trin. \_\_\_\_\_  
 which arrived at this Port on \_\_\_\_\_ 19 \_\_\_\_\_  
 at \_\_\_\_\_ o'clock \_\_\_\_\_ M. has this day been examined by the Board of Inquiry (or officer in charge) at this Port, and has been rejected for the following reasons:

\_\_\_\_\_

And the said rejected person is hereby ordered to be deported to the place from whence he came to Canada. Such conveyance shall be by the first available ship or train of the Transportation Company which brought the said rejected person to Canada.

Dated at \_\_\_\_\_ this \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

Immigration Officer in Charge  
 or Chairman of the Board of Inquiry  
 (See Order)

INFORMATION FOR TICKET AGENT

From \_\_\_\_\_ To \_\_\_\_\_  
 Ticket No. \_\_\_\_\_ Form \_\_\_\_\_

Figure 4.3: Sample of forms used for deportation cases. Library and Archives of Canada (RG76-I-A-1)

Significantly, the 1906 Act introduced and relied upon a policy device that remains the basis of Canadian immigration policy to this day (Galloway 1997, 13), the aforementioned legislative dispensation of discretionary legal authority to the executive and administrative arenas. The *Immigration Act* granted broad discretionary powers of exclusion to the executive branch of government, so that specific measures could be defined and withdrawn by Cabinet order rather than through legislative or public debate. In turn, administrative discretion was also dispensed to immigration officials and officers, granting them the interpretive authority to put policy into practice. This empowerment of the Cabinet with wide-ranging discretion meant that many exclusionary measures would be (and continue to this day to be) set out through Immigration Regulations rather than

the actual *Immigration Act* itself. The regulations afforded Cabinet the administrative flexibility to alter the criteria of admissibility and exclusion so as to manage immigration flows without recourse to parliamentary or public debate. This discretionary insulation from public consultation via regulatory and administrative rather than legislative practices meant that the formulation of immigration policy remained among a small and relatively closed cadre of Cabinet members and administrative officials (Griego 1994, 123).

In 1910, Oliver introduced a second immigration act, which further expanded the exclusionary measures of the 1906 Act. Although it was first articulated in immigration regulations following the 1906 Act, Section 38c was formally incorporated into the 1910 Act and enshrined in legislation (Kelley and Trebilcock 1998, 137). It remained in effect through the next *Immigration Act* of 1952, into the 1960s. It articulated and legally enshrined the first blanket restrictive category regarding ethnicity and race, through the discursive constitution of an “undesirable” class of immigrants (Jakubowski 1997, 15).

Section 38c set out provisions for the prohibition of entry to immigrants of:

any nationality or race of any specified class or occupation, by reason of any economic...condition temporarily existing in Canada or because such immigrants are deemed unsuitable...having regard to the climatic, industrial, social, educational, labour [conditions]...or because such immigrants are deemed undesirable owing to peculiar customs, habits, modes of life...and because of their probable inability to become readily assimilated... (Section 38c, cited in Jakubowski 1997, 16).

Section 38c designated its primary object of exclusion as “race” in 1910, which was later amended to “nationality or race” in 1919, and ultimately replaced by “ethnicity” in the *Immigration Act* of 1952 (17). Significantly, the 1910 legislation never specified what the “undesirable” nationalities or races were. Its interpretation and implementation was left

to the broad discretion of immigration officials, and only later through administrative regulations.

In the articulation of “undesirable immigration” as an administrative category without recourse to explicit specification of undesirable races and ethnicities, Section 38c produced a flexible policy category that required interpretation by administrative agents endowed with sovereign powers to decide on matters of immigrant selection and exclusion. This provision discursively constituted “the undesirable immigrant” by articulating race and ethnicity with a whole series of other markers, from labour, social, and “climactic” considerations, to cultural practices susceptible to affective judgements regarding un/desirability on the part of sovereign immigration agents endowed with powers of discretion. Throughout this period then, the criteria of admissibility and inadmissibility under this policy provision were tightened and loosened through the mechanism of administrative discretion and interpretation according to the demands of the specific economic and social conjuncture throughout this period (less restrictive at certain points in the 1920s and the post-World War II era; virtually closed during the Depression of the 1930s). In this sense, the governmental technique of discretion was and continues to be intimately bound up with the sovereign power of exclusion.

In this way, the *Immigration Acts* of 1906 and 1910 constituted key pieces of policy that institutionalized and sedimented the exclusionary framework of immigration policy for the next 50 years. The enshrinement of prohibited classes in Section 38 constituted a key discursive site for the governmental articulation of the shifting attributes of undesirable and desirable immigrants. Throughout this period a hierarchy of ethnicities, strongly influenced by eugenic discourses, was progressively articulated through the racial and ethnic criteria that were specified through Section 38c.

A list of preferred countries was produced, institutionalizing a graduated scale of ethnicity according to criteria of “assimilability” or Anglo-conformity (Aiken 2001). The scale ranged from *preferred* or desirable nationalities, to *non-preferred* nationalities, to *excluded* or undesirable nationalities (Kelly and Trebilcock 1998, 210; Whitaker 1987). The most desirable of the preferred immigrants were those of Anglo-Saxon heritage from Britain and the United States, followed closely by Northern and Western Europeans. The non-preferred ethnicities, Southern and Eastern Europeans and Jewish peoples, were recruited for labour migration in conjunctures of economic expansion during this period, “desirable from a purely economic point of view...[though] less readily assimilated” and therefore less culturally desirable. This rendered them more deportable during periods of economic downturn (Kelly and Trebilcock 1998, 210). During the period of the Great Depression, for instance, one out of every three immigrants was deported from the country, in what some have argued was a disguised temporary guest-worker system (Whitaker 1991, 13). Finally, non-European ethnicities and races (Africans, South Asians, “Asiatics,” etc.) constituted the excluded and undesirable classes who were subjected to a range of differently articulated exclusionary practices.

In contrast to such explicitly exclusionary immigration policies as Section 38c or the amended *Chinese Immigration Act* of 1923 (which almost completely restricted Chinese immigration for over 20 years), other policies in this period effected racialized and other forms of exclusion in an unmarked manner. Such policies operate virtually insofar as they produce racialized effects without naming them or giving them an explicit or concrete formal referent in policy discourses.

For instance, two significant measures related to Section 38c, one that fell under another provision of Section 38, and a second that was never explicitly codified as a



policy measure, show how virtualized forms of effective exclusion, unnamed or discursively unmarked in the letter of the policy text, were developed and administratively enacted in this period. Such measures and practices of exclusion were instituted without recourse to the explicit policy language of ethnicity or race. As Galloway (1997) notes, “many of these restrictions were formulated in race-neutral language and concealed within lengthy lists of prohibited classes” (13). Galloway (1997) specifies three techniques of exclusion operative in this period, only the first of which involves overt policy articulations of ethnicity or race: explicit prohibitions, imposition of unmeetable entrance requirements, and discriminatory burdens. Additional informal exclusionary measures included administrative regulations that indirectly implemented effective restrictions, travel sanctions and interdictions. Others were tied to the discretionary nature of immigration policy interpretation and practical implementation, such as selective administrative directives and selectively strict interpretations of policy.

For instance, the exclusion of Black Americans in this period demonstrates how racialized exclusions were implemented through effective rather than explicit policy measures. At the turn of the century, African-Americans were not a major source of immigration, and the government’s policy was therefore “simply not to promote their settlement in Canada” (Kelley and Trebilcock 1998, 154). When faced with the prospect of a tide of migration of Oklahoma blacks in 1910, efforts were quickly mobilized to pass an explicit ordinance banning “any immigrant belonging to the Negro race, which race is deemed unsuitable to the climate and requirements of Canada” (155).

Yet this attempt at an explicit exclusionary measure towards Black settlers failed to be politically enacted (Knowles 1992, 86). Instead, informal exclusionary measures were instituted through administrative directives and instructions to immigration agents

to reject all Black immigrants at the border medical inspection, based on the claim that Black peoples were biologically incapable of adjusting to the Canadian climate (Calliste 1994, 72, 75). Oliver also subjected these effective exclusionary measures to an informal “strict interpretation policy”: “there are many cases where admission or exclusion of an immigrant depends on a strict or lax interpretation of the law, so that if the immigrant is of what we would call the desirable class they are administered laxly and if he is of the presumably less desirable class then they are administered more restrictedly” (Kelly and Trebilcock 1998, 156). Indeed, this informal program of exclusion through the medical examination was as effective as any explicit policy would have been in restricting Black immigration in this period.

The first provision of Section 38 is another significant case in point. The Continuous Journey regulation was an effective administrative measure of exclusion that avoided any explicit reference to race or ethnicity. It was introduced as an immigration regulation in 1908, and was later passed as Section 38a of the 1910 Act. Formulated in neutral administrative terms on an explicit textual level (i.e. that immigrants must arrive by continuous journey from their point of departure), the regulation effectively halted South Asian immigration for the next 40 years.

Interdiction policies such as the one pioneered by the Continuous Journey regulation seek to preemptively constrain and limit virtualities of mobility, of potential movement, travel, and border-crossings of undesired populations. The Conservative government of Robert Borden that was in power in the early days of the Continuous Journey regulation ensured that all shipping transportation routes between the Subcontinent and Canada were terminated once it came into effect, forcing Canadian Pacific to shut down the last direct route. As Knowles (1992) notes, “effective

restriction...did not require that Canada resort to the distasteful and increasingly unacceptable practice of designating “undesirable immigrants” by race or nationality in immigration regulations” (88). This effective measure of exclusion was necessitated by the political dilemma Canada faced in wanting to restrict South Asian immigration without creating a political rift within the British Empire, of which India was a part (Jakubowski 1997, 14; Kelley and Trebilcock 1998, 147). The use of the Continuous Journey regulation of 1908 as an effective yet non-explicit measure of racial exclusion allowed “the government to control East Indian immigration without having the appearance of doing so” (Henry et al. 1995, 73; Jakubowski 1997, 15).

Significantly, the exclusion enacted through the Continuous Journey regulation nevertheless informally relied upon the settler colonial nature of Canadian citizenship status of the day (i.e. “British subjects”) for its justification. As *Continuous Journey* shows, the refusal of entry to Canada of the passengers of the Komagata Maru was quietly legitimated by drawing a racialized legal distinction between subjects of the British Empire.<sup>20</sup> Kazimi shows how the rationale used to establish this racialized distinction among British subjects was based on the precedent of the prior application of this distinction to “Native Indians” in Canada (as they were referred to).

Section 38a also raises the question of discretionary interpretation in policy, and how the interpretive practices of distributed sovereign powers are central to the “implementation” of exclusionary policies. Following various court challenges, Minister of the Interior Frank Oliver had to issue administrative directives to ensure that the

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<sup>20</sup> Technically, all British subjects were supposed to be guaranteed free movement throughout the British Empire. In practice however, as Gorman shows, this unified ideal of imperial citizenship was eclipsed by racialized divisions in citizenship status between subjects of the United Kingdom, the white settler dominions (including Canada), and the rest of the empire (see Gorman 2002).

regulation would be selectively interpreted and applied exclusively to “undesirable” ethnicities. Oliver issued the following instructions concerning the regulation:

Please bear in mind that the newly issued Order-in-Council re: ‘continuous journey’ is absolutely prohibitive in its terms but that it is only intended to enforce it strictly against really undesirable immigrants...a great deal is left to your discretion with regards to the particular application of the Order...[it] is therefore intended as a means of excluding those whom it is the policy of the government to exclude, but not those whom the policy is to admit (Sampat-Mehta 1973, 140-1; cited in Kelley and Trebilcock 1998, 149).

In this way, the discretionary sovereign authority granted to immigration officers, along with an informal policy of “selective interpretation,” constituted an effective but non-explicit, virtual means of excluding “undesirable” races and ethnicities throughout this period.

## 5 Ghost Ships Return

*Continuous Journey* meticulously depicts the neutral administrative veneer through which the exclusion of the Komagata Maru’s passengers was enacted in Canadian immigration policy. Any open espousal of the racist underpinnings of the Continuous Journey regulation would have political repercussions throughout the empire, not to mention the threat such repercussions could pose to the British imperial project in India. The policy could not be one of open exclusion. It had to be concealed and veiled, or as historian Hugh Johnston puts it in the film, it had to be one that could be *denied*.

*Continuous Journey* shows how the government’s tactic of refusing to grant landing to the ship, holding it at bay for two months without ever declaring its passengers excluded, kept the migrants in a state of legal exception in which they had no grounds to go to court. It is these policy mechanisms of veiled, suppressed racialization—ones that enact without naming; ones that can be denied, operating as they do through endless

deferral—that anchor my account of the virtualities at work in the nascent biopolitics of Canadian immigration policy in this period. In this the film suggestively retraces the particularities of Canadian practices of racialized exclusion in the context of global movements of empire, along with their legacies and continuities in the present.

In his reanimation of the *Komagata Maru*'s challenge of the Continuous Journey regulation in 1914, Kazimi has stated that he intentionally avoided explicit use of the words "race" and "racism."<sup>21</sup> This is not because they were marginal to the events surrounding the *Komagata Maru*. The film powerfully actualizes the racism that was constitutive of the motivations and exclusions performed by this interdiction policy. He chose to leave these terms unstated, he has said, because race was never named in the Continuous Journey regulation, and he saw this as key to how its racialized effects were enacted.<sup>22</sup> This approach both mirrors and challenges the virtualized workings of racialized exclusion in the Continuous Journey regulation that operated as a set of social forces with real, tangible effects, without a concrete naming or form.

Yet in the closing sequences of the film, two interviewees, lawyer Audrey Macklin and historian Hugh Johnston, do speak of the racist migration policies through which Canada was constituted and the racist underpinnings of Canadian social and political philosophy—the only times in the 87 minute film that racism is explicitly declared as such. These two utterances, along with the connections the film makes between the racialized interdiction policies of the past and today, became major points of contention with the film's broadcaster, who objected to their usage and wanted them removed from

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<sup>21</sup> Interview with Ali Kazimi. December 12, 2005. Toronto, ON. Subsequent citations in this section are also based on this interview.

<sup>22</sup> Kazimi has also said that he chose to mirror the original regulation's strategic avoidance of explicit utterances of race because he wanted the film to depict the process through which these racialized exclusions were enacted, rather than becoming fixed on the naming and categorization of racism.

the film. Kazimi refused.<sup>23</sup> Such moments of actualization make tangible the virtual forms of racism specific to Canada's past and present in ways that remain volatile.



Figure 4.4: Gurdit Singh, his son, and passengers on the Komagata Maru, Still courtesy of Ali Kazimi

Yet ultimately, it is in the suspended movements of the animated images of the Komagata Maru, hovering and idling as its passengers grow hungrier and increasingly desperate with no landing in sight, that the virtualized operations of racial exclusion in Canada come most starkly into view. *Continuous Journey*'s reanimation sets the ship back into motion only to leave it hanging, powerfully evoking the state of suspension through which Canadian racialized exclusions operate. Kazimi has noted that he sees this figure of the suspended ship as an image of contemporary racism in Canada, capturing how racialized power in Canada works by wearing people down, putting them off, leaving them in a state of limbo, without having to invoke explicitly racist logics. The film provocatively actualizes the continuities between the Komagata Maru, the historical and the contemporary exclusions of immigration policy, which increasingly operate through

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<sup>23</sup> Kazimi spoke out about the politics of his battles with the broadcaster on a panel at the 2005 Visible Evidence Conference (Visible Evidence XII: International Conference on the Role of Film, Video, and other Media as Witness and Voice of Social Reality. August 2005. Concordia University, Montréal, QC). As he noted, the broadcaster subsequently backed out of airing the feature length documentary, burying a shortened hour-long version of the film in a late night slot in the television schedule with little promotion. *Continuous Journey* was produced in association with TVOntario.

administrative and enforcement measures designed to deter and exhaust immigrant and refugee claimants, placing them in perpetual states of limbo and spaces of enclosure, with the aim of forcing them to abandon ship and retreat.

**AN EMERGENT BIOPOLITICS OF MIGRATION, 1960s-1990s**  
**FERTILITY/SECURITY, PRECARIETY/PROTECTION**

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## **1 Demographic Nightmares, Unreasonable Accommodations**

In October of 2005, former Québec premier, ex-Progressive Conservative federal government minister, and founder of the Bloc Québécois, Lucien Bouchard, made a somewhat dramatic return to public debate in Québec with his manifesto “Pour un Québec Lucide” (For a Lucid Québec). Signed by twelve prominent Québécois personalities and public figures, the manifesto opens with a tone of alarm and impending threat:

Alors que notre avenir est menacé par le déclin démographique et la concurrence mondiale, le Québec ne peut se permettre d’être la république du statu quo. Nous sommes inquiets. Inquiets pour le Québec que nous aimons. Inquiets pour notre peuple qui a survécu contre vents et marées, mais qui ne semble pas conscient des écueils qui menacent aujourd’hui son avenir.<sup>1</sup>

The manifesto goes on to elaborate its vision of the demographic, economic, and cultural decline of the future Québec nation, and to outline an agenda to avert the impending disaster, largely through a neoliberal economic program of privatization, cuts to public spending, and disciplining of workers to improve Québec’s global competitiveness. Yet the persistent theme running through the document is that of Québec’s “freinage démographique” (demographic slowdown) that would lead to its dwarfing by more globally competitive Asian economies on a continent of largely English and Spanish

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<sup>1</sup> “Now that our future is threatened by demographic decline and global competition, Québec cannot remain the republic of the status quo. We are worried. Worried for the Québec that we love so. Worried for our people who survived wind and floods, but who do not seem aware of the pitfalls that threaten their future today.”



speakers. The manifesto sparked a major public debate in Québec, which was soon met by a leftist contra-manifesto “Pour un Québec solidaire” (For a Québec of solidarity) that took the *Lucides* to task on a number of fronts, including its demographic alarmism.

Less than a year and a half later, in the January 2007 run-up to the Québec provincial elections, Mario Dumont, the leader of the right wing Action Démocratique du Québec (ADQ) party, released an open letter to the Québécois calling for a Québec constitution that would set out “reasonable accommodations” to religious and ethnic groups (*les communautés culturelles*<sup>2</sup>) on the grounds that Québec had to stop bending over backwards to accommodate them. The origins of the term “reasonable accommodation” are rooted in a legal concept derived from the Canadian Charter of Human Rights as well as labour law (referring to employers’ accommodation of their employees’ “special needs” around disability or culture, for instance). Monika Kin Gagnon (2007) has noted the peculiarity of this transformation of a purely legal term into a political and social discourse. This amplification of the term became particularly racialized and ethnicized through the media event produced by Québec news outlets in late 2006.<sup>3</sup>

The debate over reasonable accommodation had been building steadily in the media for several months, the result of several mediatized episodes in which, according to Dumont, the leaders of Québec public institutions had “chosen to set aside our own common values to satisfy demands put forth by [cultural] community representatives.” Dumont had already publicly spoken out in the media against these “abusive, unreasonable accommodations” of cultural communities that constituted a form of “à-

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<sup>2</sup> “Les communautés culturelles” or “ethnoculturelles” is the predominant terminology employed in Québec to designate Québécois communities of non-French Canadian, non-Anglo-Saxon and non-aboriginal descent.

<sup>3</sup> Jeff Heinrich. “Media stir up storm over ‘accommodation.’ Herouxville: Some experts blame chain ownership.” *The Gazette* (Montréal, QC). February 3, 2007.

plat-ventrisme” (groveling) that diminished Québec’s actions as a nation capable of affirming its basic principles of society. He noted that Québec is a welcoming society for immigrants, since they already receive health cards and have access to social services. In his letter he called for an end to “ce vieux réflexe minoritaire” (old minority reflex)<sup>4</sup> and to take actions that would reinforce “our national identity and protect the values that are so precious to us,” the values “of those of European stock who founded Québec.”

Several commentators have faulted the Québec media for putting the reasonable accommodation debate on the public agenda to begin with, given the escalating climate of media competitiveness that increasing media convergence has brought to Québec. In particular, Québecor, the corporate behemoth that owns over 17 newspapers, 15 magazines and the TVA broadcast network, has been critiqued for using its huge media reach to capitalize on the issue, setting off a competition among other media outlets to come up with their own latest exposé of an incident of “unreasonable accommodation.” Public and governmental institutions were besieged with requests from journalists for instances where they were solicited for adjustments to their standard policies by members of *les communautés culturelles*. One news article arguing that “this issue...[has been] put on the table... [by] the media” describes “a veritable media war, [in which] each [media chain] has been trying to trump the other with ‘revelations’ of special treatment for some religious minorities—mostly Muslim and Jewish—by government-funded institutions.”<sup>5</sup> The media’s role in amplifying the *accommodements raisonnables* debate as a major media event produced a particular momentum and attached an ongoing, unfolding sense of

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<sup>4</sup> In this way, Dumont draws on certain post-Quiet Revolution governmental discourses in Québec that call for the redefinition of the historical minority status of the Québécois people towards a majoritarian national identity that is shored up against other “ethnic” minorities. Dumont’s rearticulation of this discourse is effected through a particularly virulent, exclusionary redefinition of minority status in Québec.

<sup>5</sup> Ibid.

urgency to the debate in what was been termed “a completely media-constructed phenomenon.”<sup>6</sup> As the president of one communications brokerage firm, Jean-François Dumas, noted with respect to the controversy,

A few years ago if you came out with a big scoop, you could put it on your front page for two or three days, and the rest of the media would follow you...But in the last two years there is a new tendency...It's open war now between the different media networks, and with 24-hour news, there's a snowball effect: a continuous multiplication of explosions of news, and because of that the news can last for months.<sup>7</sup>

The increasingly diffused, expanding momentum of news media events such as this open the way for governmental figures to step in and capitalize on the media attention and momentum to publicize their “tough” stances within the terms of the media’s problematization of the issue.

Indeed, Dumont’s carefully timed call only fuelled the building public and media controversy in Québec, with responses ranging from outrage to forceful support, all of which culminated in an event two weeks later that set off an even larger international media storm. The parish municipality of Hérouxville in the Mauricie region, a town of approximately 1,300 residents with next to no immigrants, passed a municipal code of conduct for immigrants (of no legal validity) that outlines “normal” and unacceptable forms of conduct (*les norms de la vie*) for eventual immigrants who wish to live in the municipality. The list of prohibited practices draws on highly orientalist, colonial framings of an invading non-Western “barbarity” threatening to undermine such “Québécois values” as equality between men and women. Confirming feminist insights into how racialized women’s bodies become the sites through which governmental nationalisms are staged and fought (Caplan, Alarcon, and Moallem 1999; Nadeau 2001),

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

many of the prohibited practices centered on the bodies of immigrant women: explicitly prohibiting the stoning of women, the veiling of women (except at Halloween), and female genital excision. According to the controversial city councillor who instigated the code, the aim is to put an end to reasonable accommodations and “pour pouvoir dire noir sur blanc aux immigrants comment ils doivent s’attendre à vivre s’ils choisissent Hérouxville.”<sup>8</sup> Faced with a firestorm of criticisms about the racist nature of the code and accusations that its purpose is to scare off immigrants and close the door to immigration, the city councillor vehemently disagreed. “On en veut des immigrants, c’est écrit noir sur blanc dans le papier! On en a même un ici, on en a même un. Et il est heureux comme un pape!”<sup>9</sup> Drouin was referring to a seven year old hockey playing Haitian-born boy, adopted by a woman struggling with infertility, and touted as a model of proper adaptation and evidence of the tolerance of the town.

Dumont responded to the controversy by deflecting the critiques of the Hérouxville code back onto the wave of discontentment that the mediatization of his stance had provoked. “La vraie dérive a eu lieu dans des accommodements déraisonnables. Il faut voir Hérouxville comme un cri du cœur.”<sup>10</sup> Six weeks later, just prior to the Québec elections in which the ADQ won a massive breakthrough victory as the official opposition party (going from 5 to 41 seats) in the Québec elections, a candidate for the ADQ was dumped by the party for controversial comments he made to

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<sup>8</sup> “...to be able to say in black and white to immigrants what to expect when they choose to come to Hérouxville.”; Jean-Phillipe Cipriani. “Strict code de conduite pour les immigrants.” *Radio-Canada.ca*. 27 janvier, 2007. <http://www.radio-canada.ca/nouvelles/regional/modele.asp?page=/regions/mauricie/2007/01/27/001-herouxville-immigrants.shtml> (accessed March 2007).

<sup>9</sup> “We want immigrants! It’s written in black and white in the document! We even have one here, we even have one. And he’s as happy as the pope!”; *Radio-Canada.ca*. “Dans l’œil du cyclone.” 29 janvier, 2007. <http://www.radio-canada.ca/nouvelles/regional/modele.asp?page=/regions/mauricie/2007/01/29/004-herouxville.shtml> (accessed March 2007).

<sup>10</sup> “The real problem started with unreasonable accommodations. You have to look at Hérouxville as a cry from the heart.”; *Presse Canadienne*. “Pour régler les accommodements raisonnables, il faut voter ADQ, dit Dumont.” 1 février, 2007.

the media. Christian Raymond publicly stated that the Québécois needed to “boost their birth rates, otherwise the ethnics will swamp us.” But as one newspaper article put it, Raymond’s “empirical observation on birth rates was not the firing offence; it was his inflammatory follow-up: ‘If they don’t want to conform, they can just go back home. I say to them: You’re not at home here, you’re visiting.’”<sup>11</sup>

What is noteworthy and volatile here is how the mediatized controversy around *les accommodements raisonnables* has shifted the parameters of what is considered acceptable debate and action with respect to the regulation of immigrants and immigration by the “host” society (typically rendered as a question of immigrant integration). Empirical observations about the declining birth rate and swamping by ethnics have become acceptable (indeed they inscribe themselves within governing logics), as are “heartfelt cries” in the form of orientalist, racialized governmental regulations on immigrant conduct. Yet too explicitly stating sentiments of the “go back home” variety or anything that represents a closure to immigration are not.

There are, of course, many layers and particularities at work in the production of this event, from the polarization of urban versus rural politics and the framing of Montréal as the target of resentment by the regions, to the extension of governmental logics to non-legally binding codes of conduct by small municipalities; from the role that the media has played in amplifying the reasonable accommodation debate into a major media event, to the political machinations of the ADQ. The very volatility of the debate and its massive amplification in the media also suggest the extent to which the very terms of the debate were affectively contoured, framed as a matter of *reason* in the face of the

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<sup>11</sup> Bruce Cheadle. “Immigration critical to Canadian population growth, yet policy debate lacking.” *Canada.com/Canadian Press*. March 13, 2007. <http://www.canada.com/globaltv/bc/story.html?id=a88dda4c-61e4-4c37-a2c9-490c5d3b7469&k=35839> (accessed March 2007).

mass outrage expressed around perceived unreasonable accommodations. This belies the extent to which affect, and in this case specifically racialized affects tied to a sense of cultural entitlement and territorial property,<sup>12</sup> comes to shape what is perceived to be reasonable in public debate. Ghassan Hage (1998) calls this sense of cultural and territorial entitlement “governmental belonging,” which in both Québec and Canada quickly become condensed into questions of national sovereignty.

For Hage (1998), governmental belonging is a racialized “belief in one’s possession of the right to contribute to...[the nation’s] management such that it remains ‘one’s home’” (47). Hage argues that those who claim to belong to the field of legitimate whiteness adhere to a conviction in their centrality as “governors” of the nation, while ethnics are conceived of as those “one can make decisions *about*: objects to be governed” (17). This is just as much the case for those adopting an anti-immigration stance as for those who “welcome...[immigration] under some conditions they feel entitled to set...[such that] migrants and...‘ethnics’ are welcomed, abused, defended, made accountable, analyzed, and measured” (17). Following Hage, Dumont can be understood to be appealing to popular sentiments of governmental belonging on the part of those who perceive themselves to be “authentic Québécois” in order to reframe Québec sovereignty as a political goal away from traditional expressions of desire for an independent state (which his equivocal “autonomist” position obscures) to a culturalist

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<sup>12</sup> The absurd character of the notion of un/reasonable accommodation in this debate becomes particularly evident when one considers the settler colonial nature of this sense of cultural entitlement and territorial property. As René Boudreault has noted, the debate is an absurdity from an aboriginal point of view, which has remained all but absent from the media coverage. As Boudreault asks, “Que penser des peuples autochtones qui...seraient en droit, en vertu de la même logique, d’imposer les normes majoritaires de leurs sociétés au reste de la société québécoise?” (What to think of aboriginal peoples who would be within their rights, by the same logic, to impose the majority norms of their societies on the rest of Québec society?). René Boudreault. “Quelle caricature, d’un point de vue autochtone...” *Le Devoir*. 7 février, 2007.

form of sovereignty channeled through more explicit, expanded forms of governmental regulation of immigrant bodies and conduct.

However, for the larger purposes of this chapter, I want to emphasize the extent to which what many—particularly in English Canada—have characterized as the extremism of a very Québécois debate, on the contrary inscribes itself perfectly in the governing logics and forms of biopolitical regulation of Canadian immigration that emerged in the 1960s and 1970s. This is not to deny the particularities of the framing of this debate to Québec, where specific notions of linguistic and cultural security and particular demographic discourses came to play a large role in the post-Révolution Tranquille era (as I will consider further in this chapter). Nevertheless, the recent debate around reasonable accommodation follows directly in the lineage of such Canadian governmental policy trajectories as the 1975 *Green Paper on Immigration and Population* and its articulation of specifically biopolitical practices through which Canadian immigration was sexualized in relation to demographic fertility and population growth. The biopolitics that emerged in this period represented a shift away from the more explicit eugenicist forms of racialized exclusion in earlier immigration policy to more implicit but no less effective forms of racialized regulation and exclusion routed through demographic population and security measures. As this chapter will show, once immigration becomes understood as an inevitable, unavoidable route to future population growth in the face of diminishing birth rates, it becomes subject to ever mounting, implicit forms of monitoring, regulation, measurement, and securitization.

## 2 How Many Is Too Many? Who Should Get In?

IMMIGRANTS. HOW MANY IS TOO MANY? WHO SHOULD GET IN?  
CAN WE TELL THEM WHERE TO LIVE—AND WHAT TO DO?

-- Cover of *Maclean's* newsmagazine, Mary Janigan, December 16, 2002.

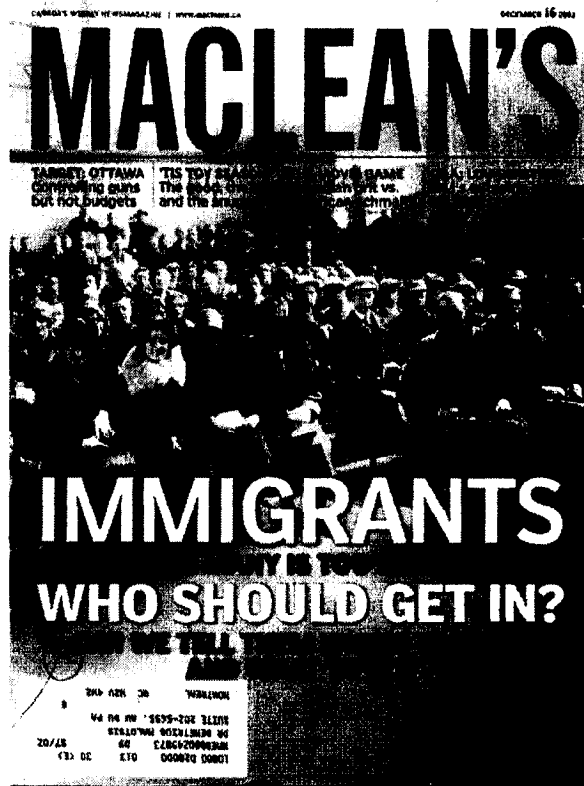


Figure 5.1: *Maclean's*, December 12, 2002

The key transition away from the era of explicit eugenicist racism, the period of immigration policy reforms of the 1960s and 1970s, is typically celebrated in Canadian national narratives as a progressive moment in which racism was banished from Canadian immigration policy. This is due to the fact that the ethno-racial hierarchies defining preferred, non-preferred, and undesirable immigrants were removed from immigration selection policies (Section 38) and replaced by a point system that structured selection criteria according to economic criteria, skills, competencies, and the labour needs of the nation. This radically shifted the composition of immigration flows into Canada towards the previously non-preferred and excluded non-European sources. This



is also the era in which the three discursive policy categories that continue to structure Canadian immigration policy were first introduced and formalized in the *Immigration Regulations* of 1967: independent class economic immigration (determined through the point system), family class immigration, and later (in 1978), refugee class immigration.

These shifts are typically presented as the modernization of Canadian immigration policy and the end of a shameful era of overt racism. A Citizenship and Immigration Canada webpage entitled *Milestones of the 20<sup>th</sup> Century* for instance, typically states,

In 1962, new immigration regulations are tabled to eliminate all discrimination based on race, religion and national origin. In 1967, the government...introduces the point system for immigration selection. This non-discriminatory policy evaluates independent immigrants on the basis of their ability to contribute to the Canadian economy (CIC 2000a).

One of my key arguments in this chapter is that, rather than banishing racism from the governmental regulation of Canadian immigration, this era represents a rearticulation from a eugenicist state racism towards a fully developed biopolitics incorporating an economic logic to effect a regulatory state racism and sexualization of immigration. Under the auspices of a renewed economic framework for Canadian immigration policy, this new biopolitics of immigration was framed around four key features articulated with economic factors in ways that I will be considering in this section: the sexualization of immigration with respect to fertility indicators; the rearticulation of exclusionary measures around security and precarity, and the enshrinement of a biopolitics of humanitarian protection via refugee policy. In short: a biopolitics articulated around security, fertility, precarity, and protection.

My framing of this critical transition in 1960s Canadian immigration policy draws on Foucault's account of the transition from a late 19<sup>th</sup> century bourgeois form of eugenic

racism focused on questions of degeneracy, to a biopolitical regulatory form of racism centered on the life of the population (Foucault 1978). It is important to note that the biopolitics of migration that emerged in this period and that continue to be effective today have both a productive and a deductive, divisive side. Foucault has argued that sovereign power operates primarily as a means of deduction (*prélèvement*), by which he means a “subtraction mechanism...a right of seizure: of things, times, bodies and ultimately life itself...seiz(ing) hold of life in order to suppress it” (136). On the other hand, post-sovereign forms of power operate productively, in such a way that “deduction’ [becomes]...merely one element among others, working to incite, reinforce, control, monitor, optimize, and organize the forces under it: a power bent on generating forces...ordering them, rather than...making them submit, or destroying them” (136). While many have read such claims by Foucault in ways that downplay the role of sovereign, deductive power in post-sovereign forms of biopower, I want to emphasize the ongoing persistence and centrality of these forms of sovereign powers of seizure and suppression in the biopolitics of migration at work in contemporary settler nations. So while sexuality becomes the mode through which the life of the population is secured through a productive logic of expansion and optimization of population size (whether through population growth or population control), state racism remains a crucial mode by which the population in settler nations is secured through a logic of division and death (dividing the population into those who must die, be suppressed, contained, excluded in order that the population may live). This optimizing, productive, regulatory logic of sexuality and the deductive, highly divisive logic of state racism form a common frame in processes of normalization (Stoler 1995, 92). This chapter will consider the interplay and

interdependence of both of these logics as they have been governmentalized in the rearticulated policies of the 1960s to the 1990s.

With respect to the manner in which this transition from a eugenic racism to a biopolitical racism was effected, it is very telling that the removal of explicit racial restrictions in immigration selection occasioned by the 1962 *Immigration Regulations* was effected in all but one area. Section 31 (d) was the only provision that maintained the distinction between preferred, non-preferred, and excluded classes when it came to family sponsorships of adult children, siblings and other extended family. The provision was inserted at the last minute out of a fear of an influx of non-European “unskilled” relatives (Hawkins 1972, 131). In other words, the final preserve of explicitly discriminatory ethno-racial selection criteria was reserved for family class immigration.

Another telling factor shaping the rearticulated policy framework that emerged from this transition is the subsequent definition and the formal distinction between independent and family class immigration introduced in the 1967 *Immigration Regulations*, along with the introduction of the point system (formally, the Norms of Assessment point scheme) that is still used today. At this time, the government sought to “rationalize its standards for inclusion and exclusion by setting up a point system that quantified an immigrant’s worth in terms of education, skills, and resources” (Pâquet 1997, 3). The newly articulated economic logic driving the immigrant selection criteria was also reflected in the 1966 governmental reorganization of the immigration department into the newly created Department of Manpower and Immigration (a merger of the previous Departments of Citizenship and Immigration with Labour) (Kelley and Trebilcock 1998, 349).

Contrary to the claims implicitly forwarded by the accepted, celebratory progress narrative of Canadian immigration policy then, this chapter argues that the abolition of ethno-racial criteria and entrenchment of economic criteria and labour needs in this period not only did not signal the end of state racism in immigration policy, but that it introduced new, increasingly biopolitical forms of state racism and sexualization. This is not only the case because im/migrant labour market needs and economic criteria are far from neutral indicators, and continue to be articulated along gendered and ethno-racial lines. But it is also the case because the capitalist (and increasingly neoliberal) economic logic that defines and demarcates an economically productive policy category of independent class immigration simultaneously demarcates and sets off other categories (family class, refugee class) that are deemed to be economically unproductive, and therefore perpetually suspect. Furthermore, as we shall also consider, the line demarcating the “desirable,” permanent labour of independent class immigration from precarious, temporary and undocumented labour was explicitly laid out and entrenched along racialized lines in the governmental policy of this period. The biopolitical forms of state racism that emerged in this period operate though increasingly implicit, virtual modes, on the one hand framed as acting upon *potential* threats to security (criminality, health, security), and on the other, channeled through a sexualized articulation of population growth in the face of declining fertility rates.

A key factor motivating the formal definition and distinction between independent versus family class categories,<sup>13</sup> along with the rearticulation of selection criteria along the

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<sup>13</sup> More precisely, the 1967 *Regulations* created two categories of family class immigrants in addition to the independent class: sponsored relatives and nominated or assisted relatives. Sponsored relatives involved immediate family members; assisted relatives involved more “distant” family members who were subjected to a slightly relaxed version of the point system. The motivation being a concern of immigration officials that “too many unskilled workers were being sponsored by relatives, a process which was largely beyond the

economic and labour lines that replaced the former racial criteria via the point system, was also the fear of an explosion of family class immigration from non-traditional source countries (Kelley and Trebilcock 1998, 353, 359). As a response to this fear, the policies of this period sought an “increase[d]...integration between immigration policy and Canada’s labour needs...” as a means to “curtail unscreened family sponsorship in favour of more screened independent immigrants” (353).<sup>14</sup> The distinction in formal policy categories introduced between independent and family class claimants in this period rearticulated and entrenched a biopolitical sexualization of immigration policy, in which the gendered and sexualized category of family class immigration continues to be a target for biopolitical and restrictionist monitoring as a suspected source of “unskilled,” undesirable migration (particularly of racialized women) (Thobani 1999). As Peter Li notes with respect to contemporary migration politics,

...family-class immigrants and refugees are often seen as ‘unsolicited’ or ‘self-selected’ immigrants, as opposed to those who have the human capital or investment capital to meet the labour market criteria to be admitted under the independent class. The difference between selecting independent class immigration and admitting family-class immigrants and refugees underscores the thinking that economic immigrants are more valuable and desirable” (Li 2003, 42-43).

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department’s control” (Kelly and Trebilcock 1998, 359). The nominated relative category was subsequently assimilated into the independent class in 1993 (with bonus points assigned for family ties) (403).

<sup>14</sup> As Kelley and Trebilcock note, this fear was more strongly articulated in the recommendations of the 1966 *White Paper* than in the actual subsequent revised 1967 *Regulations* (which responded to the strong opposition expressed in public consultations against the *White Paper*’s advocacy of restrictions to family class sponsorship by distinguishing sponsored and assisted relative categories). Yet it was nonetheless a motivating factor in the articulation of these policy categories and continued to inform subsequent policy shifts emphasizing labour needs and skills in this period. See, for instance, the 1974 regulations that sought to “restrict immigration by tying it more closely to employment conditions” (361, 349).

### 3 Fertility and the Biopolitical Sexualization of Immigration, 1960s-1970s

What I call *biopolitical sexuality* refers to forms of managed sexuality deployed through norms and policies that regulate sexual desire according to its productive and indeed reproductive consequences for the population. Sexual conduct and kinship relations are biopolitically monitored and regulated according to their impact on the expansion and control of populations, while forms of non-productive and non-normative sex and kinship are intensively regulated as potential national threats (Stoler 1995, 26). As Stoler shows, sex becomes a matter of state in the administration of populations. In particular, governmental techniques link the regulation of sexual practices, sanctioned family/kinship relations, reproductive/public health policies, and fertility rates as a key series of sites in the biopolitical naturalization of the heteronormative sexual norms of population. These forms of biopolitical sexuality constitute key techniques through which settler nations such as Canada are sexualized around female reproduction and the governmental regulation of love and kinship (Nadeau 2001; Fortier 2007).

Yet this biopolitical sexuality is enacted through the divisive logics of state racism, according to which desirable elements of the population are to be reproduced for the good of the state, while others are to be targeted, diminished, and sometimes violently excluded from this productive logic for the security of the population. My primary focus is on the productive side of the equation in this section, in which I undertake a detailed examination of the biopolitical sexualization of immigration as a matter of population in this period. Later in the chapter, I also consider the other, deductive side of the equation by examining the rearticulation of exclusionary logics through the regulation of security and temporary labour.

Intensifying the biopolitical sexualization of immigration of this period, both the 1975 Canadian government *Green Paper on Immigration and Population* and the emergence of Québec's immigration policy foreground the heightened articulation of immigration with fertility in governmental policy in this period. To this day, immigration continues to be framed as playing a “compensatory sexual role” in “replenishing” a population besieged by falling birth rates. For instance, a 2005 *Toronto Star* editorial (“Population report urgent wake-up call”) quotes then Prime Minister Paul Martin announcing his decision to boost annual immigration targets to 320,000 in this way: “Within 10 short years...there will be only 3 1/2 working Canadians for every senior citizen...By 2015, our domestic labour force will start to shrink, so all of the net growth will need to come from new Canadians.”<sup>15</sup> Canadian governmental policies implicitly and explicitly frame immigration as a form of intervention into population growth, the policy contours of which can be effectively tracked in the *Green Paper* of 1975.

### **3.1 The Green Paper on Immigration and Population (1975)**

One of the key elements in this newly articulated biopolitics of migration was an emerging set of techniques in the sexualization of immigration in this period. With the formulation of the *Green Paper on Immigration and Population* (Manpower and Immigration Canada 1975), immigration became explicitly framed as a compensatory policy tool for intervening in falling fertility rates (so-called “deficit fertility”). This biopolitical articulation of immigration with fertility created the basis for the elaboration of a series of new techniques of governmental regulation of the population.

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<sup>15</sup> *Toronto Star* (Editorial). “Population report urgent wake-up call.” September 30, 2005.

The 1975 *Green Paper on Immigration and Population* stands as a landmark piece of policy forging an explicit articulation of immigration with fertility, based on the strategic deployment of immigration policy as a means of intervention into population levels.<sup>16</sup> The *Green Paper* was commissioned and tabled by Manpower and Immigration Minister Robert Andras as the first step in his drive to introduce a new immigration act, culminating in the *Immigration Act* of 1976.<sup>17</sup> It was followed up in 1975 by over fifty public hearings with over 400 witnesses across Canada—the first time that such extensive public consultation was made part of the policy formation process (Hawkins 1972, 375; Kelley and Trebilcock 1998, 349). As its title suggests, the explicit purpose of the *Green Paper* was to recommend the formulation of immigration policy within the purview of a formal population policy.

In order to fully grasp the governmental logics of the report, it is important to outline two key elements of the sociopolitical context to which the *Green Paper* was responding. Firstly, a major impetus for the paper was a loophole in the 1967 set of *Immigration Regulations* that had created a large administrative backlog of “irregular” immigrant claimants in 1972 by allowing visitors to apply for landing while in Canada. This forced the government to amend this provision and introduce a partial amnesty and regularization program for the adjustment of status of around 52,000 applicants, in the 1973 Adjustment to Status Program (Kelley and Trebilcock 1998, 371). This prompted

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<sup>16</sup> It is important to note, however, that the *Green Paper* of 1975 was not by any means the first attempt to link immigration and population policy. Such efforts have a long tradition in Canadian immigration policy, dating back to MacKenzie King's 1947 policy of population growth through selective immigration, Diefenbaker's 1959 *National Development Policy*, and the 1966 *White Paper on Immigration* (Taylor 1997, 2; Pâquet 1997, 3).

<sup>17</sup> The 1976 Act being the first “modernized” immigration act to be passed after the 1960s removals of explicit ethno-racial hierarchies from Canadian immigration policy.



widespread fears about the loss of control of immigration flows, and the threat of a further mass influx of “irregular” immigration.

A second key element that provided the impetus for the *Green Paper*’s linking of immigration to population was a social phenomenon taking root throughout the Western world in the early 1970s: the massive decline in fertility rates. According to the *Green Paper*, the fall of fertility rates in Canada to below the so-called “replacement rate” of 2.2 children was registered in governmental statistics starting in 1972. This was tied to a variety of factors that tend to be grouped under the rubric of “modernization” (and the progress narrative that implies), not the least of which were the rise of feminist and sexual liberation movements. As a global phenomenon, fertility rates have stayed below “replacement” levels to this day in North America and Europe (and increasingly in parts of the South). The *Green Paper* and the accompanying policy reports I refer to below constantly emphasize and express concern over these low fertility rates.

Once a decline in fertility rates is registered in the statistical technologies of governmentality, the result is almost invariably an intensified concern with immigration and an immediate policy problematization of immigration with respect to population. As noted in a policy report on demography and immigration by Chris Taylor, a one-time director of immigration policy development for the federal government, “new demographic conditions have led to the re-awakening of the demographic-immigration linkage” (Taylor 1997, 22). The report focuses on two tools of population growth that governments have at their disposal in achieving their demographic objectives: fertility policy and migration policy (8). Taylor also notes that, whereas European responses to declining population are couched almost exclusively in terms of fertility policy, the Canadian government (as befits a settler colonial nation) has largely responded to debates

around population policy with reference to higher immigration levels (17).<sup>18</sup> In another government report on immigration levels planning, H. G. Howith (1988) affirms that, with the fall in fertility levels, “immigration was...regarded as the available instrument by which to attain any *desired future population* size” (3, italics added). Taylor goes on to further question the “extent to which Canadians will be willing to accept that immigration should make up for deficit fertility” (18). In this way, the ostensibly rational governmental logics underlying the statistical measures and charts are ultimately beholden to affectively charged public notions of *desirable* and *undesirable* population growth.

Three other demographic indicators are necessary to consider here in order to capture the governmental rationalities articulating immigration, fertility and population. The *age structure* serves to monitor the so-called “graying” of the population due to a low birth rate. Immigration is often proposed as the key means to “smooth out” an imbalanced age structure (Taylor 1997, 16). The *dependency ratio* measures the balance between those who are working versus those are being economically supported as an overall ratio of the population. And finally, the *absorptive capacity* measures how many immigrants a population is supposed to be able to absorb, and is often invoked as means of addressing the fear of uncontrolled immigration. Most of these policy studies point to the “graying of the baby boomers” in the current decade as a potential crisis point in which an uneven age structure will create an imbalanced dependency ratio that will disturb the economic welfare of the population. This is where the drive for immigration

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<sup>18</sup> Of course, as Noiriél shows, non-settler nations such as France that experienced sharp falls in fertility rates in the nineteenth century also relied to a great extent on immigration for population growth and economic expansion. Yet, because of their very different founding myths of nationhood, immigration was not explicitly articulated with fertility in the *same* way in either national narratives or immigration policies (Noiriél 1992). Most European nations have tended to privilege fertility rates in the governmental project of population growth, though recent decades have shown a gradual shift to immigration as a source of growth along the lines of the Canadian governmental approach.

becomes a crucial strategy to replenish and recalibrate the age structure and dependency ratio. Despite the persistent popular and policy rhetoric of immigration as an economic drain, such governmental logics pose immigration as vital to supporting the pensions of the baby boomers (15-16). Yet, such a drive is always tempered and restrained by the fear or “concern” that “unmanaged immigration volumes would result in population growth beyond the...‘absorptive’ capacity of the country” (Howith 1988, 3). As a strategy to manage these two pulls, the *Green Paper* offers “a rationalization of slow growth” as the ideal population agenda for immigration (Taylor 1997, 4).

Poised at the cusp of these tensions between the drive for immigration fuelled by falling fertility rates (the drive for *desirable* population growth), and the fear of uncontrolled immigration awakened by the regularization program of 1973 (the anxiety of *undesirable* population growth), the *Green Paper* sought to explicitly ground Canadian immigration planning in a comprehensive population policy. Taylor (1997) notes that the *Green Paper* offered “a rationalization of slow growth and the need to better manage the [immigration] level which appeared to be out of hand...” (4). Howith (1988) shows the extent to which the links between immigration and population were foregrounded, noting that “the then-Department of Manpower and Immigration was designated as the lead federal agency for demographic policy, in large measure because of the linkage between immigration and demography” (3). Though the report’s stated goal of an official population policy ultimately failed (Hawkins 1972, 381),<sup>19</sup> I would argue that this attempt

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<sup>19</sup> Interestingly enough, while several provinces rejected the idea of introducing population guidelines as recommended by the *Green Paper*, the province that showed itself to be the most favorably incline to the *Green Paper* was Québec, due to its “interest in demographic problems” (Hawkins 1972, 381). As Hawkins shows, while the attempt to introduce an explicit population policy under the auspices of Canadian immigration policy failed at this juncture, the “population problem” has continued to be a recurring concern that has shaped the parameters of governmental immigration policy on an ongoing basis (382-383).

at a population policy was successfully channeled through the elaboration of a whole new set of regulatory mechanisms for immigration policy that the *Green Paper* inaugurated.<sup>20</sup>

To begin with, the new *Immigration Act* of 1976 that came out of the *Green Paper* process led to the enshrinement of the three discursive categories that continue to organize Canadian immigration policy along sexualized and gendered lines: the independent class, family class, and refugee class. Independent class immigration is based on the selection of “skilled immigrants” and investors with capital who are deemed to be economically productive and therefore desirable to the nation. As a discursive category that serves to implement the economic regulation of immigration (combined with the temporary worker category of short-term labour migration), it predominantly processes young, highly skilled men. For instance, in 2000, 76% of those admitted under the skilled worker category that makes up one of the four streams of independent class immigration<sup>21</sup> were men (Couton 2002). The family class policy category organizes the sexual regulation of immigration, and it is unsurprising that it predominantly processes women and children, with adult men making up 4% of family class immigrants in the 1990s (Arat-Koc 1999; Thobani 1999).

This has several implications with respect to the gendering and sexualization of independent versus family class categories. The regulations that accompanied the 1976 Act introduced sponsorship provisions for the family class of 10 years (during which the sponsor is bound to provide economic support for the sponsored relative), due to the

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<sup>20</sup> The Joint Senate-House of Commons Committee that issued a final report to Parliament which formed the basis for the new *Immigration Act* rejected many of the *Green Paper*'s conclusions. Yet key recommendations it made to Parliament included the introduction of an annual quota on the number of immigrants accepted. This and other recommendations by the Committee show the extent to which the discursive parameters laid out in the *Green Paper* influenced governmental policy (Kelley and Trebilcock 1998, 379).

<sup>21</sup> The other three sub-categories of independent class immigration are investors, entrepreneurs, and the self-employed.

intrinsic definition of the family class as an economically unproductive form of migration (Kelley and Trebilcock 1998, 402). In the event of a sponsorship break down, which often occurs in situations of spousal abuse, women are trapped through this institutional and discursive ordering in a relationship of economic and institutionalized dependency that can result in their deportation.<sup>22</sup> Prior to the proposed recognition of same-sex couples as part of the family class in 2002, gays, lesbians, and bisexuals seeking reunification with same-sex partners had to apply through the independent class and ask for humanitarian and compassionate consideration of the relationship. Finally, the sexual regulation of the family class has more recently led to the implementation of genetic testing of family class claimants who originate from cultures with different or extended family structures than those customary in the West, ostensibly to prevent the entry of “paper families.”

According to many sources in the immigration settlement field, African claimants are being disproportionately targeted by this form of testing, which constitutes a costly procedure that is difficult to afford in such contexts (OCASI 2005).

The other major innovation that was introduced with the *Immigration Act* of 1976, based on the central recommendation of the *Green Paper*, was the establishment of levels planning for immigration (Manpower and Immigration Canada 1975, 13). For the first time, an annual levels report specifying the number of immigrants to be accepted based on economic, social, and demographic considerations was required to be tabled in Parliament. According to Section 7 of the *Immigration Act* of 1976 that introduced levels planning, the numbers need to be justified with specific reference to and accounting for

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<sup>22</sup> These were in effect until the most recent *Immigration and Refugee Protection Act* (2002), which reduced sponsorship provisions to three years (after sustained political protest and pressure from feminist and immigrant women’s community groups). In 2002, same-sex couple relationships were also recognized as part of the family class for the first time. However, these changes were implemented through the *Immigration Regulations* rather than the legislation itself, which means they can be easily amended at the Minister of Immigration’s discretion at any time.

demographic considerations (Howith 1988, 1). This was an outcome of the *Green Paper* recommendation that a higher degree of regulation of immigration flows be implemented through the establishment of quotas on the number of immigrants Canada was prepared to admit. The elaboration of mechanisms for regulating immigration levels was clearly formulated to prevent the specter and fear of uncontrolled immigration. According to the *Green Paper*, “if Canadians wish immigration policy to function as a mechanism to steer population growth along a charted course, then the immigration program must be adapted to permit confident forward planning as to the numbers of immigrants Canada receives” (10).

In this way, the *Green Paper*’s linking of immigration, fertility, and population in policy became an occasion for the elaboration of further mechanisms of biopolitical regulation of the population. Foucault’s account of the transition from sovereign law to post-sovereign regulation speaks strongly to this transition in Canadian immigration policy (Foucault 1997). As opposed to sovereign repressive power, regulation operates through micro-measures of modification, optimization, and calibration aimed at maximizing the life of the population. As Howith (1988) notes with respect to the *Green Paper*,

The management of immigration levels evolved as a result of the growing recognition that immigration was important not only to the domestic labour market and the Canadian economy in general, but also to Canada’s demographic future...The case for replacing a largely unplanned system with a managed inflow was strong enough to persuade elected officials...that a formal structure for management should be put into place as part of an up-to-date immigration policy and program...(8).

Indeed, the governmental elaboration of Canadian immigration policy continues to follow this post-sovereign model of regulatory power.

Ever since the *Immigration Act* of 1906 discussed earlier, Canadian immigration legislation has continued to be formulated on the model of framework legislation. The legal framework of the Act continues to be broad and general, laying out principles and dispensing discretionary authority, while the majority of detailed criteria for the selection of desirable immigrants and exclusion of undesirable claimants are articulated in the *Immigration Regulations*. As the *Green Paper* notes,

It is not surprising that governments have preferred to use regulations rather than statutes for expressing policies respecting what classes of people might be admitted to Canada. Regulations can be changed relatively easily and quickly, and thus a new policy can be implemented with a minimum of delay. The result has been a steady flow of new regulations over the years, but immigration acts have not been subject to frequent change (21).

This is a typical strategy of post-sovereign regulatory power. It allows for the micro-regulation and continual readjustment of immigration regulations and criteria of admissibility so as to maintain a control of the immigration flows that always threaten to become uncontrollable. In this sense, it was a landmark instantiation of biopolitical, post-sovereign regulation in Canadian immigration policy. Levels planning operates, not through strictly repressive power, but through micro-measures of modification, optimization, measurement, and calibration. Yet, as the escalation in deportations during this same period attests, as we shall see further on, the post-sovereign regulation of immigration in Canada continues to require and rely upon sovereign practices of power when it comes to the regulation of mobility, detention, and deportation of im/migrants.

### 3.2 Linguistic Security: The Emergence of Québec's Immigration Policy

*Ton arrière-arrière-grand-mère, elle a eu quatorze enfants  
 Ton arrière-grand-mère en a eu quasiment autant  
 Et pis ta grand-mère en a eu trois c'tait suffisant  
 Pis ta mère en voulait pas; toi t'étais un accident.*

*Et pis toi, ma p'tite fille, tu changes de partenaire tout l'temps  
 Quand tu fais des conneries, tu t'en sèves en avortant  
 Mais y'a des matins, tu te réveilles en pleurant  
 Quand tu rêves la nuit d'une grande table entourée d'enfants<sup>23</sup>*

— Extraits de la chanson "Dégénération", le dernier succès du groupe *Mes Aïeux*<sup>24</sup>

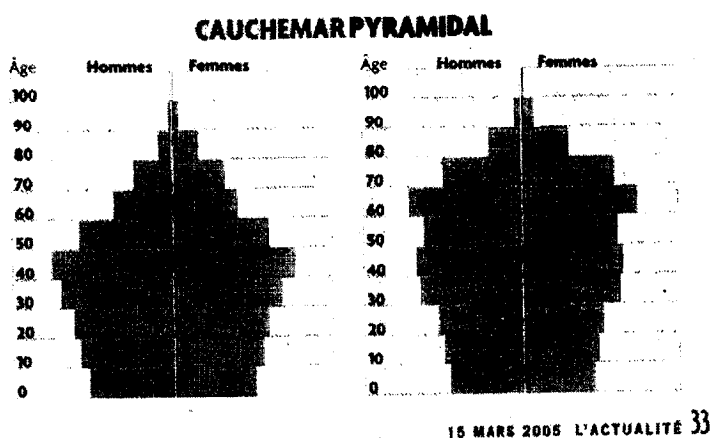


Figure 5.2 : *L'actualité*, March 15, 2005

The cover story of the March 15, 2005 issue of *L'actualité* (with a pale, sleeping baby swaddled in white on the cover with the heading "Recherchés!") featured these

<sup>23</sup> Your great great grandmother, she had fourteen children  
 Your great grandmother had almost the same number  
 And your grandmother had three and that's quite enough  
 And your mother did want any at all; you were an accident

And you, my little girl, you switch partners all the time  
 When you get into trouble, you get out of it by having an abortion  
 But there are some mornings that you wake up crying  
 When you dream at night of a large table surrounded by children

— Excerpt from the song "Dégénération", the hit song by the group *Mes Aïeux* (My Ancestors)

<sup>24</sup> *Mes Aïeux* are a popular fusion folk group with several gold and platinum selling albums in Québec. In addition to a rural following, a significant portion of their fan base consists of "hip," urban twenty-somethings. They are considered the leaders of the néo-traditionnel (neo-traditional) movement in the Québécois cultural scene.



lyrics from the hit song *Dégénération* by *Mes Aïeux* above a series of graphs showing the “Cauchemar Pyramidal” (“Pyramidal Nightmare”) of the current age distribution in Québec. Part of a larger feature series on “le thème de dépeuplement du Québec”<sup>25</sup> due to low fertility rates, illustrated with myriad graphs, statistics, and quotes from demographers, the article interviews the lead singer of the group, Stéphane Archambault, regarding the “claque dans la face” (slap to the face) he sought to deliver “volontairement” (voluntarily) to sound an alarm with the song. Elsewhere in the feature dossier “Québec Choc 2013” (the year in which the effects of *la dénatalité* will become perceptible), a CROP poll is presented that shows that 2 out of 3 Québécois believe that “la dénatalité menace la langue de Vigneault,”<sup>26</sup> and over half are against the government raising immigration rates as a means to counter the effects of *la dénatalité* (55% against versus 33% who are for). The article recounts how *Mes Aïeux* were recently visited backstage after a performance in Gatineau by a mother accompanied by 10 of her 13 children. “La dénatalité,” states Archambault, “ça me fait peur ‘au boutte. Ce n’est pas un excellent signe de vitalité quand un peuple ne fait plus d’enfants...”<sup>27</sup> (Trudel 2005, 29).

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<sup>25</sup> “...the theme of the depopulation of Québec.”

<sup>26</sup> “...the low birth rate threatens the language of Vigneault.” Gilles Vigneault is one of the most celebrated *chansonnier*, poets, and Québec nationalists of the *Révolution Tranquille* generation.

<sup>27</sup> “The fall in birth rates scares the hell out of me. It’s not an excellent sign of vitality when a people stops making children...”



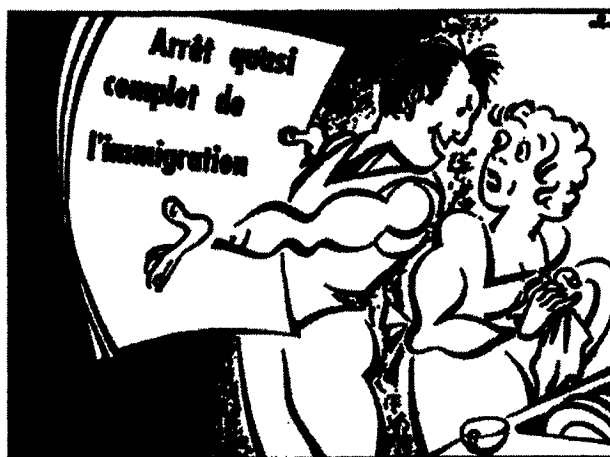
Figure 5.3: *L'actualité*, March 15, 2005

Québec's strong historical tradition of demographic discourses have long emphasized a pro-natalist politics of fertility in relationship to immigration, at times conjoined with a pastoral vision of an idealized rural life rooted in Québec's past. Though based in an earlier era of so-called "survival nationalism" in Québec, a political cartoon from a 1957 edition of *Le Devoir* nicely captures the distinctive articulations of fertility, immigration and economic discourses in the pro-natalist population politics of the nation. Depicting a somewhat menacing domestic scene, a woman washing dishes cowers as her presumed husband glares at her and holds a sign that declares "No more imports. An almost total stop to immigration. We're going back to craft production."<sup>28</sup> The cartoon encapsulates a classic right wing, racialized politics of population through a pro-natalist, anti-immigration stance. Yet in this section, I want to elaborate a somewhat less obvious and explored aspect of these population politics by situating the governmentality of

<sup>28</sup> "Plus d'importation. Arrêt quasi complet de l'immigration. Nous retournons à l'artisanat." Political cartoon by Robert LaPalme, published in *Le Devoir*, August 1, 1957: 4.

fertility and population in Québec in relation to the emergence of Québec's immigration policy and the sometimes highly pitched concern with the *francisation* of immigration.

### **Plus d'importation**



### **Nous retournons à l'artisanat**

Figure 5.4: *Le Devoir*, August 1, 1957

At the peak of the so-called “revanche des berceaux”<sup>29</sup> period that lasted until the 1950s, high fertility rates implied little governmental concern with the matter of immigrant integration (indeed, alarmist hostility towards immigration was more common (Pâquet 1997, 4). Nonetheless, prior to the 1930s, such immigrant groups as the Italian community predominantly enrolled in the French-language Catholic school system and “integrated” with French-Canadian communities (Behiels 1991,13). However, due to a series of complex factors in Québécois educational policies after the Second World War, Québec streamed the majority of its massive post-War immigration flows into the English-language Protestant school system (Behiels 1991,14-15, Malpas 1984). This created the basis for the implicit association of immigration with anglophone affiliation,

<sup>29</sup> “La revanche des berceaux” or “revenge of the cradles” is a popular term denoting the high birth rates among French-Canadians in the period leading up to the Quiet Revolution of the 1960s.

while also perpetuating a longer-standing discourse of immigration as a “cheval de troie anglophone” (anglophone Trojan horse) for Québec (Helly 1992, 157).

Paralleling the renewed preoccupation with population in Canadian immigration policy of the 1970s, the dramatic drop in fertility rates that accompanied the *Révolution Tranquille* of the 1960s awakened widespread concern with immigration as central to the demographic future of Québec. Not coincidentally, the Québec Ministry of Immigration was created in this period (1968), an outcome of the nationalist drive to take political control of the governmentality of immigration. Accompanying this drop in fertility rates and the immediate ramifications of immigration as the predominant factor in Québécois population growth, a massive political concern with immigrant integration and *francisation* emerged. This concern was first governmentalized in the recommendations of the 1972 Gendron Commission and the 1974 passage of Bill 22 that served to stream immigrants into French-language schools (Behiels 1991, 21-22). Certainly one of the hallmarks of the advent of Québec’s assertion of governmental control in this respect was the introduction of its own immigration legislation by the Parti Québécois in 1979, including its own point system that granted immigrants up to 12 points for French language proficiency (Kelley and Trebilcock 1998, 392).<sup>30</sup>

The news media in this period offered a key site for the popularization and diffusion of governmental logics of population linking immigration and fertility in ways that served to mobilize an affective sense of threat. For instance, the premiere issue of *Les Dossiers du Devoir*, an issue not coincidentally released in November of 1976 (the same month as the Parti Québécois victory), takes as its inaugural thematic: “Population et fait

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<sup>30</sup> At the time, English-language proficiency netted immigrants 2 points in the Quebec point system. As of 2007, the Québec point system now grants up to 16 points for French language proficiency, and 6 for English.

français” (*Le Devoir* 1976). The issue is replete with the classic trappings of governmental discourses of population, including pages upon pages of statistical charts and graphs displaying the relative population growth of Québec in relation to Canada, along with foreboding headlines about the *minorisation* of Québec. In particular, (non-francophone) immigration and fertility rates are continually conjoined in statistical displays throughout the dossier, including detailed measures of the “fécondité des femmes par groupe ethnique” (fertility of women by ethnic group).

Despite the heterogeneity of populationist and demographic traditions in Québec national discourses and significant recent shifts in the siting of immigrants as part of the national project (most evident in some of the recent electoral strategies of the Parti Québécois), key practices of demography, particularly *la démolinguistique*, continue to play a central role in perpetuating alarmist discourses that pose immigration as a threat to francophone survival (*la survivance*). Demographers such as Marc Termote, Charles Castonguy, and Jacques Henrepin occupy a central role in Québécois public culture, in both media and governmental discourses on the population of Québec.<sup>31</sup> In the *L’actualité* feature series cited earlier, Henrepin, the founder of the Department of Demography at the Université de Montréal and author of such works as *Naître ou ne pas être* (1989), declares in a rather classic biopolitical statement, “Ce n’est pas normal qu’une espèce vivante ne se renouvelle pas”<sup>32</sup> (Trudel 2005, 24).

For his part, Marc Termote has long advocated against immigration as a substitute for fertility policy, arguing that it represents a danger to Québec’s linguistic and

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<sup>31</sup> It should be noted here that a range of feminist political groups in Québec have been at the forefront of a long-standing and ongoing critique of the natalist politics forwarded by such demolinguists as Henrepin, Termote, and Castonguy (for more, see Bergeron and Jenson 1999).

<sup>32</sup> “It is not normal when a living species does not renew itself.”

cultural security (Termote 1991, 162). More recently, he has argued that “la fécondité et la migration internes sont des facteurs beaucoup plus importants que celui de la mobilité linguistique [i.e. le ‘transfert linguistique’ des immigrants] quand on étudie l’avenir du français...seule une politique de population peut assurer cet avenir”<sup>33</sup> (Elkouri 2001). Castonguy has proposed a demographic measure of the “francotropicalité” of different immigrant groups (based on statistical rates of their so-called “transfert linguistique”) to establish a scale of desirability in the selection of independent class immigrants (for instance, Latinos would rank high, South Asians low). Castonguy has argued “on ne saurait assurer l’avenir du français au Québec et au Canada sans assurer l’avenir démographique de la population qui le parle comme langue première au foyer.”<sup>34 35</sup> Critical demographers such as Victor Piché have taken Castonguy to task, arguing against the measurement of “la langue parlée au foyer” (the language spoken in the home) instead of “la langue publique” (language spoken in public) as an indicator of language use in Québec. Piché has argued against this demographic practice of governmentality in which immigrants are attacked through linguistic indicators (Piché 2001).

This attests to the extent to which the “immigration issue has been intimately tied up with both the demographic crisis and the language debate” in Québec (Behiels 1991, 21). In a 1992 policy report commissioned by the Ministère des Communautés Culturelles et de l’Immigration, pages upon pages of graphs correlate the relative

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<sup>33</sup> “...fertility and internal migration are much more important features than linguistic mobility [i.e. the linguistic transfer of immigrants] when the future of the French language is studied...only a policy of population growth can assure this future.”

<sup>34</sup> “...we will not be able to secure the future of French in Quebec and in Canada without securing the demographic future of a population that speaks French as a first language in the home.”

<sup>35</sup> Rima Elkouri. “Des démographes se contredisent aux états généraux sur la langue.” *La Presse*. 26 janvier 2001.

measurements of different immigration and fertility rates for the future population of Québec (Ledent 1993).

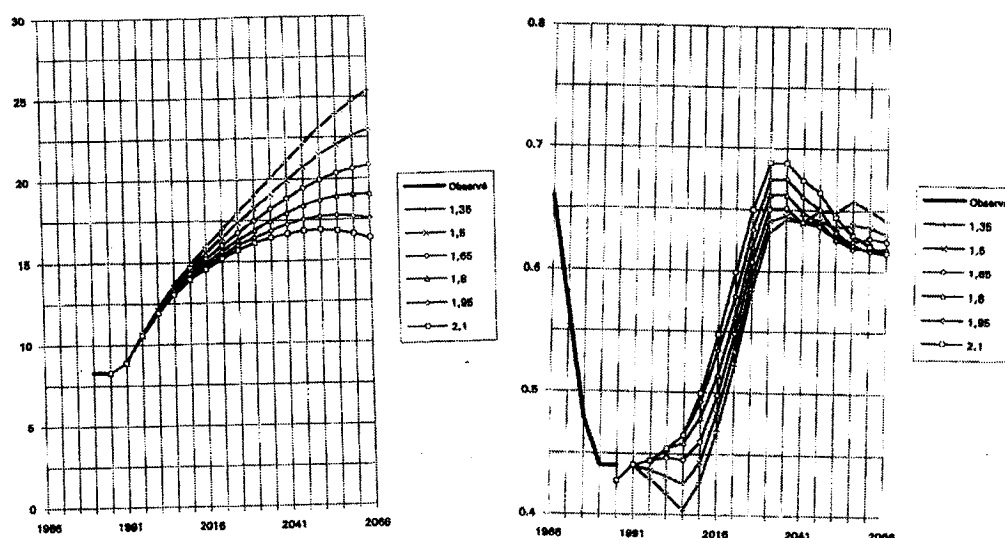


Figure 5.5: Impact de la fécondité sur le pourcentage d'immigrants, Jaques Ledent (1992)

Figure 5.6: Impact de la fécondité sur l'indice de dépendance Immigration, Jaques Ledent (1992)

The critical linkage of immigration and fertility in Québécois governmental discourses is distinctive in its articulation of these factors with *linguistic security*. In a CROP poll presented in the *L'actualité* feature dossier entitled "Québec Choc 2013," pollster Claude Gauthier notes that when the poll question around *la dénatalité* was posed in general terms, respondents were not particularly concerned about it. It was only when the poll question was posed in terms of a linguistic threat, of the threat that *la dénatalité* posed to the French future of the country ("la dénatalité pose-t-elle une menace pour l'avenir français du pays?") that 2 out of 3 Québécois responded strongly in the affirmative (Trudel 2005, 29). This articulation of language with security constitutes a central element in governmental practices of population in Québec.<sup>36</sup> Linguistic security

<sup>36</sup> The Canadian government has also sought to place greater emphasis on language in federal immigration policy. Due to strong protest by immigration advocates, it had to withdraw its proposal to introduce

constitutes the nodal point and a distinct articulation of the sexualized and racialized biopolitics of immigration at play in Québec.

#### **4 Regulating the Population: Security, Precarity, Protection**

Given the inevitability that immigration came to represent in the predominant demographic governmental discourse of Canada's increasing reliance on immigration for population growth, the sexualization of immigration that took place in the 1970s was accompanied by and indeed enacted through new biopolitical forms of exclusion and regulation of immigration. The inevitability of immigration has meant the intensification of governmental practices of screening, containment, and exclusion of "undesirable" migrants. With the abolition of explicit forms of racial exclusion, this period has seen the introduction of increasingly sophisticated, implicit or virtualized forms of exclusion and state racism of the kind pioneered in the *Continuous Journey Regulation* of 1908. They have been progressively enacted over the last thirty years through an intensifying biopolitics of security, precarity, and protection.

##### **4.1 Temporary Labour and the Biopolitics of Precarity**

While the immigration policy reforms of the 1960s and '70s are typically presented as a progressive shift from a policy based on racial criteria to a neutral, non-racist policy based on economic criteria, the implications of the new economic criteria are rarely questioned in such celebratory narratives with respect to the economic precarity

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language testing as part of the selection process in 1998. See Virginia Galt. "Language Barrier: Racist or Realistic?" *The Globe and Mail*. January 20, 1998. In federal immigration regulations, language tends to be framed as a question of economic competency and skill.



and inequality they entrenched. Not only was the independent class of economic and therefore productive immigrants defined over and against family class immigration, but it was also crucially articulated over and through another, often invisible category of migration: that of temporary labour. Immigration policy organizes differential forms of migration status that route migrants along different paths in the economic apartheid that constitutes the Canadian labour market. It is through the differential access that immigration policies organize with respect to standard employment, temporary labour, and undocumented or “underground” forms of labour that the biopolitics of migration status and the biopolitical fault lines of citizen/non-citizen, legal/“illegal” are drawn. In this way, the explicitly racialized hierarchies that were ostensibly removed during the immigration policy reforms of this period were preserved through the divide between independent class immigration versus temporary and undocumented labour migration.

As Nandita Sharma has shown in her significant research on these matters, the introduction in 1973 of the Non-Immigrant Employment Authorization Program (NIEAP) played a strategic role in shifting the racialized criteria of the pre-1967 categories of non-preferred and undesirable immigrants on to the newly produced category of non-immigrant/migrant worker (Sharma 2006, 22-23). The NIEAP was introduced amidst anxieties about the potential flooding of Canada of unskilled racialized people (22), and served to resubordinate and channel them towards the restrictive temporary status of migrant or foreign worker. As Sharma shows, the NIEAP serves to organize a supply of foreign workers in such fields as domestic work and seasonal agricultural labour “where labour shortages exist” under precarious labour conditions and no possibility of permanent settlement or immigration. Sharma terms this “unfree labour,” and shows how the conditions set out in governmental policy that produce

temporary work visas include a basic denial of freedom of labour market or spatial mobility, access to social programs or collective bargaining, or the possibility of more permanent forms of immigration. In effect, the NIEAP organizes “a system of forced, rotational, unfree contract labour recruitment” (113)—in other words, the ideal form of precarious, flexible labour needed for Canadian employers operating in the context of a globalizing neoliberal capitalism. Sharma shows the racialized composition of the stream of migration produced through the NIEAP, whose source countries are weighted over 60% in favour of workers from the Global South and East (130-132).

Perhaps the most striking effects of the NIEAP in this period is the shift it has occasioned in Canada’s overall immigration policy from one weighted towards permanent settlement in favor of an increasing turn to rotational temporary labour. Sharma shows that the proportion of immigrants with permanent resident status to temporary workers has drastically shifted in the 30 years since the introduction of the NIEAP. Whereas in the year of its introduction, im/migrant workers with permanent resident status made up 57% of overall incoming workers, in 2004 that number was reduced to 35%, with migrant workers currently making up 65% of workers migrating to Canada (119).

A biopolitics of precarity defines and shapes the racialized distinction between temporary labour migration versus independent class immigration that came to regulate differential forms of access to the formal labour market in this period. In a commentary in the *Globe and Mail* entitled “In search of perfect immigrants,” immigration lawyer Peter Rekai points out the extent to which what he calls “Canada’s two-tiered international talent search” is an ongoing and large-scale phenomenon. According to Rekai, the projection of the number of new independent class “economic immigrants” and their

family members for 2007 was 160,000, while 100,000 temporary foreign workers were expected to *leave* the country.<sup>37</sup> The governmental definition of the status of migrant workers as inherently *temporary* and *non-immigrant* is a highly political one insofar as it places these workers outside the population and further bars them from any possibility of becoming an integral part of it, at the same time that their labour serves key biopolitical functions for the life of that population (from child-rearing to food provision). Moreover, the biopolitical regulation of status and racialized distinction between citizen and non-citizen serves a similar function as the security measures discussed in section 6.3, insofar as it places non-citizens in a state of ongoing exception from the norms and freedoms governing the labour and mobility conditions of citizens and fully-fledged members of the population.

#### **4.2 Dangers, Excessive Burdens and the Biopolitics of Security**

With the advent of the new *Immigration Act* in 1976, the range of prohibited classes in place to date, including “homosexuals, the insane, and physically defective persons,” were removed. Rather than the end of what are understood today to be outmoded and unjust forms of exclusion however, this in fact signaled a shift from explicit eugenic forms of exclusion based on hereditarian racism, hygiene, and attributions of social deviancy/degeneracy to rearticulated biopolitical forms of exclusion. The older prohibited classes were actually replaced by much broader categories of inadmissibility in the new *Immigration Act*, framed around dangers to security, public health, and excessive burdens on health or public services (Kelley & Trebilcock 1998, 395). Indeed,

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<sup>37</sup> Peter Reikai. “In search of perfect immigrants.” *The Globe and Mail*. November 6, 2006.

deportations in this period of progressive immigration reform jumped substantially (between 1967-71); the motivating factors most often classified as stealth or misrepresentation, and criminality (348). This opened the door for the progressive elaboration of new forms of biopolitical state racism defined around the regulation of security and criminality, two of the most prominent techniques by which immigration continues to be racialized today.

My framing of the biopolitics of security that emerged in this period encompasses several of these admissibility factors in addition to security as more narrowly defined in immigration policy. It includes policies targeting security, criminality, and public health. Each of these areas is defined around the containment of dangers to the population. Over the course of this *Immigration Act's* term (1978-2002), each of these areas was extended and subject to increasingly preemptory terms, as befits the increasingly virtual modulation and regulation of threats by preemptive means—one of the hallmarks of biopolitical forms of power. With the implementation of Bill C-86 in 1993, both medical and criminal grounds for inadmissibility were modified. In the former case, the modifications allowed for the exclusion of those who, “for medical reasons are *likely* to endanger public health or safety, or would be too great a burden on health or social services” (emphasis added).<sup>38</sup> In the later case, the criminal grounds for inadmissibility were broadened to deny entry where there are “*reasonable grounds to believe* that the applicant is engaged, or has been engaged, in planned or organized criminal activity”<sup>39</sup> with no requirement of an actual prior conviction (Kelley and Trebilcock 1998, 396) (emphasis added). Bill C-86 also introduced a new form of criminality into the Immigration Act, barring those for whom there are

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<sup>38</sup> *Immigration Act, 1976*, s.19 (1) (a) as amended by Bill C-86 (1993).

<sup>39</sup> *Immigration Act, 1976*, c.49, s.11 (1) as amended by Bill C-86 (1993).

reasonable grounds to believe will “engage in terrorism” or are “members of an organization that there are reasonable grounds to believe will engage in terrorism” (Aiken 2001, 63).<sup>40</sup>

The widening frame of discretionary standards for admissibility based on *potential* terms—“likely”, “reasonable grounds to believe”, etc.—has vastly extended the exclusionary scope of these categories. It is also important to note that they have been implemented and intensified through key events that have unfolded in specifically racialized ways, from the Just Desserts shootings in 1994<sup>41</sup> to SARS in 2003 (Leung and Guan 2004), along with a wider social racialization of crime and health (Razack 1998; Neugebauer 2000). In this way, the broad categories of inadmissibility implemented in this period have enacted new forms and tactics of racialized exclusion based on a biopolitical, virtualized modulation of potentials. Instead of the eugenic medical screening of degeneracy and the unfit, we now have medical screening of potential dangers and excessive burdens to public health. The latter inscribes public health in a specific articulation between welfare state and neoliberal economic logics, in which the guiding concern becomes guarding public healthcare and social programs from external leeching.

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<sup>40</sup> *Immigration Act, 1976*, s.19 (1) (e) (iii) and s.19 (1)(e)(iv)(C) as amended by Bill C-86 (1993).

<sup>41</sup> In April 1994, a major media storm was set off around the shooting death of a young woman during a robbery attempt at the Toronto café Just Desserts. The alleged assailants who were eventually charged and convicted of the murder were all young Black men, one of whom was a Jamaican immigrant with a lengthy criminal record whose deportation had been stayed five years previously. His immigration status (though he had immigrated to Canada as a child) and the stay of deportation became the focal points of a highly racialized media spectacle that framed young Jamaican men as violent, criminal threats to Canadian society, with many calling for a “toughening” of deportation measures to protect “Canadians.” The framing and momentum of the event led to the passage of what the media dubbed the “Just Desserts Bill” (Bill C-44) in 1995, which eased and increased removals of those deemed to be “dangers to the public” for reasons of serious criminality (Kelley and Trebilcock 1998, 434). In the two years following the passage of the bill, almost 40% of the deportations carried out under the amendment in Ontario targeted black Jamaicans (Falconer and Ellis 1999). For more on the media event and the policy impacts of the Just Desserts incident, see Pratt (2005, 140-149), and Burman (2007).

Yet perhaps the area where this preemptive biopolitical regulation of potential threats has been taken to the furthest extreme is in the realm of security and immigration. Indeed, this period saw a veritable problematization of security as a matter of immigration, in which immigration remedies become the first line of response to real or perceived crises of security (Ceric 2006, 14-15; Amnesty International 2005, 4). Although security has always been a central concern and focus of Canadian immigration policy from the time of the first post-Confederation immigration act (Aiken 2001), the *Immigration Act* of 1976 introduced and implemented the security architecture and procedures that continue to be in place today (carried over with some variations into the IRPA of 2002), including the notorious security certificates.

As I will consider in much greater detail in Chapter 6, two key features define this biopolitical rearticulation of security: the citizen/non-citizen, status/non-status dichotomy, and the state of exception. The implantation of the citizen/non-citizen dichotomy via the security certificate process and other security measures in the *Immigration Act* (Ceric 2006) entrenches the fundamental biopolitical distinction between members of the population who assure its vitality, versus those non-members and outsiders to the population who are defined as potential and therefore implicit threats. The exceptional treatment of non-citizens in the security certificate process introduced in the *Act*, in which principles of fundamental justice and due process are set aside in favor of an expedited, secret trial using reduced standards of evidence and no right of appeal, are paradigmatic of the states of exception that Agamben argues are central to the work of biopower (2005).<sup>42</sup> Reg Whitaker (1987) frames the security inadmissibility provisions

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<sup>42</sup> My approach to Agamben's notion of the state of exception is further elaborated in Chapters 3 and 4.

introduced in the 1976 *Immigration Act* as the introduction of the “most sweeping statutory authority to exercise administrative discretion in national security matters” (269-70).

### **4.3 The Biopolitics of Protection and the Emergence of Refugee Policy**

It is not coincidental that this period saw the parallel emergence of a formalized refugee policy in close conjunction with this biopolitics of security. The biopolitical articulation of refugee and security matters are closely and mutually informing, and have only intensified in the current conjuncture.<sup>43</sup> Whereas refugee intake prior to this period was carried out in an ad hoc, reactive manner, the *Immigration Act* of 1976 introduced the first formalized refugee policy in the history of Canadian immigration policy. As with the intensified monitoring of sexuality and fertility with respect to family class immigration, the introduction of a formal stream of migration not based on purely economic criteria also meant an intensified and heightened screening of prospective refugees through security provisions and a liberal humanitarian calculus of protection. This image of liberal humanitarianism tied to refugee policy has been cultivated by the Canadian government internationally, shoring up Canada’s self-image as a benevolent, caring leader on the world stage.

Yet the refugee class as a policy category is implicitly and explicitly defined against economic class migration, thereby constituting a lightning rod for popular discontent with respect to its “utility” for the population from its very outset. As Susan L. Carruthers has argued with respect to the adoption of an international refugee rights consensus in US

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<sup>43</sup> It is also not a coincidence that this period saw the establishment of the Canadian Security and Intelligence Service (CSIS) in 1984, whose role in the articulation of immigration and security will also be considered in greater detail in Chapter 6.

immigration policy, “the postwar elaboration of a refugee regime was a thoroughly racialized mechanism by which ‘first world’ states privileged the ‘political persecutee’ over the ‘economic migrant’—with a color line demarcating these two invented categories” (Carruthers 2007).<sup>44</sup> This racialization of the distinction between the authentic refugee as purely political persecutee and the bogus economic migrant from the South or East was equally operative in Canadian refugee policy. In this way, the biopolitics of protection shaping Canadian refugee policy rests on a fundamentally equivocal, ambivalent notion of protection and the dual affective register it mobilizes: on the one hand, the image of a compassionate humanitarian society offering protection to the world’s innocent, dispossessed victims from blighted and often evil parts of the world; on the other, the implicit biopolitical threat that inauthentic, burdensome and/or dangerous refugee claimants pose to a benevolent country in need of protection from such abuses.

Without going into the details of the complex refugee policy apparatus that emerged at this time, two key considerations are important to note for our purposes here. Firstly, it is significant that the formal and absolute distinction between refugees and (economic) immigrants that underlay the introduction of the refugee class as a distinct policy category was not an immutable, unchanging one. It is interesting to reflect upon (and unsettle) the now taken-for-granted distinction between these two categories of immigration in light of the fact that, for much of Canada’s immigration history, as Dirks (1995) has shown, officials and politicians made no distinction between immigrants and refugees (61). Secondly, from its inception, the introduction of the inland refugee

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<sup>44</sup> Nevertheless, Carruthers notes that US refugee admissions policy in practice was even more restrictive than the racialized political refugee/economic migrant dichotomy would suggest. Those who were privileged as authentic refugees in the postwar era, predominantly Slavic men fleeing communist regimes, were nonetheless considered to be “racially suspect as Slavs...[and] possible KGB plants” and were treated as such by US authorities and the wider society (Carruthers 2007).



determination process became the focal point of “ongoing public debate and acrimony” (63). From the outset, the legislative enshrinement of the refugee determination process led to the creation of a restrictive and complicated system rooted in a politics of implicit suspicion of refugee claimants (initially including “credible basis” inquiries,<sup>45</sup> admissibility and security screening phases). The cumbersome nature of this process produced a series of major backlogs as the determination system became overwhelmed by the bureaucratic hurdles it had erected to monitor and screen claimants. A public and popular backlash soon ensued against a refugee policy deemed to be overly slow, costly and bureaucratic, and at the same time overly permissive and lax for the claimants left in its limbo (Kelley and Trebilcock 1998, 411-440). Indeed, Kelley and Trebilcock (1998) frame the “refugee crisis” that followed the introduction of a formal refugee policy as the dominant theme in Canadian immigration policy of the 1980s and 1990s (435), fuelled by “mounting media and public pressure [in the face of which] the government felt compelled to take more decisive action” (415).

In response to the public crises sparked by these governmental backlogs and rise in inland refugee claims, alternately characterized in terms of “public hysteria”, “emotionalism,” and “the perception of an emergency” (so key to the functioning of biopolitical threats) (Kelley and Trebilcock 1998, 419), a series of amendments and partial amnesties were introduced in an attempt to reassert governmental order over a system perceived to be out of control. Two versions of the Bill C-55 amendment that led to the creation of the Immigration and Refugee Board (IRB) in 1989 were passed in 1985 and 1989, with a telling governmental mandate: “to maintain ‘the integrity of our refugee determination system’ by ensuring the protection of legitimate refugees, while deterring

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<sup>45</sup> The credible basis test was eventually abolished with the passage of Bill C-84 in 1992.

the ‘shameful manipulation’ of false abusive claims” (Kelley and Trebilcock 1998, 416). From the outset then, the refugee class has been defined against the specter of the false and potentially dangerous abusive claimant, the latter of which operates through a founding suspicion that serves to regulate the entire category.<sup>46</sup>

Another major series of amendments, in the form of Bill C-84, were introduced as a result of an emergency summer recall of Parliament following a large-scale media event that took shape around the east coast boat landings of 174 Sikh refugee claimants on the *Amelie* in August 1987. Bill C-84 included governmental measures to deal with “illegal refugee smuggling” (Kelley and Trebilcock 1998, 417), and to bring about the expedited deportation of those deemed to be criminal or security threats (417). Notably, Bill C-84 also introduced detention on the grounds of identity for refugee claimants arriving without identity documents deemed to be acceptable. It also contained a provision authorizing Canadian authorities to turn back ships suspected of transporting refugee claimants before they landed on Canadian soil, but this caused a great deal of debate among opposition parties and community groups, and was eventually dropped (417). The 1988 passage of Bills C-55 and C-84 also introduced a range of interdiction policies and the earliest version of a “safe third country” provision<sup>47</sup> (see Chapter 6), “to provide machinery to make it more difficult for a person to make a refugee claim, and, indeed, to enter Canada in the first place” (418). In governmental debate around the passage of the bills, New Democrat Dan Heap argued that “the government chooses sneaky administrative measures to shut out refugees” as a veiled form of racism (422). The

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<sup>46</sup> For a more detailed look at how the figure of the “bogus refugee” became further articulated to public fears about welfare fraud and crime in the mid-1990s, see Pratt (2005, 109-138).

<sup>47</sup> This first version of a safe third country provision was not effectively implemented because regulations were not introduced at this time prescribing which countries were deemed safe (Kelley and Trebilcock 1998, 418).

biopolitics of protection at play in the development of a formal refugee policy have, over time, increasingly relied on such non-visible forms of administrative exclusion and monitoring, the culmination of which we shall consider in the coming chapter.

## 5 Desirable Population Growth / Desirability

“Throughout virtually all of Canada’s history, politicians, business leaders, journalists, and a host of other would be experts have made unsystematic, impressionistic assertions about the desirable size and composition of Canada’s population” (Dirks 1995, 113)

Imaginings of desirable population growth continue to be pervasive in the contemporary scene of Canadian immigration politics, accompanied by the continual twinning of immigration and fertility in both governmental policy discourses and the media. For instance, the May 31, 1999 issue of *TIME* magazine<sup>48</sup> displayed the immigration-fertility link on its front cover with a headline declaring “Declining birthrates and a rising immigration tide are transforming the Canadian mosaic.” The immigration-fertility link was emphasized throughout the issue through the use of colorful graphs and charts.

With the release of the Canadian Censuses in 2002 and 2007—the census perhaps being *the* central governmental technology of truth—a similar set of governmental displays could be found on the front pages of newspapers throughout the country. According to the census results of 2002, for the first time in Canadian history immigration was the primary motor of population growth in Canada. Once again, the repeated

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<sup>48</sup> *TIME* magazine. “A Changing People.” Cover Story. May 31, 1999, Canadian edition.

conjunction of immigration statistics and fertility rates was evident throughout the news coverage, with many visuals counter-posing immigrants and pregnant women or babies.<sup>49</sup>

## 2001 CENSUS POPULATION GROWTH AT RECORD LOW

### INFILUX TO URBAN CENTRES

Immigration takes  
over as main source  
of 4% increase

BY GRANNE HAMILTON

minimum level of representation,  
none will have a seat.  
The changes, scheduled to be in  
effect in time for an election after  
June, 2004, show that Ontario's  
political weight continues to  
grow, said Jack Schrab, executive  
director of the Association for  
Canadian Studies.  
"If Ontario continues to vote in  
a relatively monolithic way, and  
increases its place in the House of  
Commons, parties in the future

Grandes régions métropolitaines du Québec:  
chiffres de population et variations en pourcentage (1996 et 2001)

	POPULATION		Variation en %
	2001	1996	
Grand Huit (Montréal-Gatineau)	2 575 568	2 470 772	4,2 %
Grand Montréal	3 426 350	3 326 447	3,0 %
Grand Sherbrooke	153 811	149 569	2,8 %
Grand Québec	682 757	671 889	1,6 %
Grand Trois-Rivières	137 507	139 956	-1,7 %
Chicoutimi-Jonquière	154 938	160 454	-3,4 %
Population dans les 6 grandes régions métropolitaines précédentes	4 812 931	4 693 387	2,5 %
Population hors des 6 grandes régions métropolitaines	2 424 548	2 443 408	-0,8 %

Source: Statistique Canada (www.statcan.ca)

Figure 5.7: *National Post*, March 13, 2002

Figure 5.8: *La Presse*, March 12, 2002

The 2002 census was accompanied a year later by a special in-depth report released by Statistics Canada on “The Fertility of Immigrant Women and their Canadian-Born Daughters” (Bélanger and Gilbert 2003). The report garnered a good deal of media attention due to its findings that the fertility rates of immigrant women in Canada, and particularly that of their second-generation daughters, drops precipitously once they settle in Canada.<sup>50</sup> For the 2007 census, the media widely reported findings that two-thirds of Canada’s population growth of 5.4 percent, the highest among the G8 (Group of 8) industrialized nations,<sup>51</sup> was due to immigration, an amount that “more than compensated for the country’s flat fertility rate.” Also widely publicized were predictions that by 2030, Canada would be 100% dependent on immigration for population growth. As a Canadian Press article put it, “The trend lines suggest Canada is well-positioned to

<sup>49</sup> See for instance, Anne Kingston. “Facing a future with fewer children.” *National Post*. March 13, 2002.

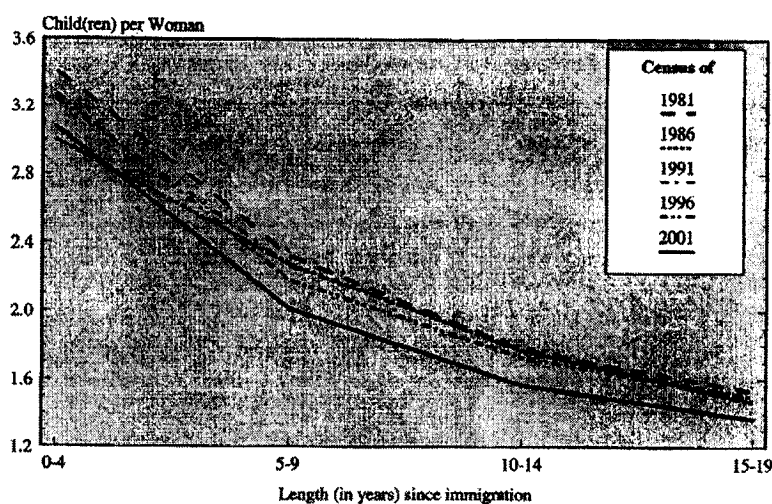
<sup>50</sup> *CBC.ca*. “Fertility rates drop for immigrant women.” December 23, 2003.

[http://www.cbc.ca/news/story/2003/12/22/fertility\\_rates031222.html](http://www.cbc.ca/news/story/2003/12/22/fertility_rates031222.html) (accessed January 2004).

<sup>51</sup> This was up from the 4% growth rate reported in the 2002 census, which had been considered the lowest half-decade growth rate in modern Canadian history (Cheadle 2007; see next footnote for full reference).

weather the demographic storm—providing the country successfully integrates its huge migrant population.”<sup>52</sup>

**Figure 3. Total Fertility Rate of Women Born Abroad by Period of Immigration, Canada, 1981-2001**



Sources: Statistics Canada, censuses of Canada, 1981 to 2001.

Figure 5.9: Statistics Canada Chart of Immigrant Women’s Fertility Rates (Bélanger and Gilbert 20, 141)

In this way, the targets of the massified biopolitical desire for optimal population growth become the bodies and comportments of “*desirable*” and “*undesirable*” immigrants themselves. Im/migrant bodies are continuously framed, screened, monitored and measured according to this biopolitical calculus of desirability, often through indicators of “integration.” This calculus is directly tied to a larger biopolitics of status, one that has taken on shifting forms in the historical transition from settler colonial to eugenic to biopolitical forms of racism and their ongoing permutations into the present.

<sup>52</sup> Bruce Cheadle. “Immigration critical to Canadian population growth, yet policy debate lacking.” *Canada.com/ Canadian Press*. March 13, 2007. March 13, 2007. <http://www.canada.com/globaltv/bc/story.html?id=a88dda4c-61e4-4c37-a2c9-490c5d3b7469&k=35839> (accessed March 2007).

One vivid rendering of this sexualized articulation of Canadian immigration around a biopolitics of desirability appeared in a *New York Times* article<sup>53</sup> on a federal policy initiative that will attempt to target and settle new immigrants in the under populated rural areas of Canada, as opposed to the ostensibly overcrowded cities of Vancouver, Toronto, and Montréal that together draw over 90% of new immigrants (Krauss 2002). The article opens with an idealized portrait of the desirable immigrant such a policy imagines: Lidia Tschritter, a Mennonite recent immigrant from Kazakhstan, who “comes to the door barefoot to meet her nine children as they return home from school” while waiting for her husband to arrive home from his job in a local understaffed factory. The article dwells on Tschritter’s homemade flower print dress, her hair in a kerchief, her sumptuous vegetable garden, her family’s barn full of animals, and her archaic German accent as she declares how wonderful Canada is. It goes on to proclaim:

This is the snapshot the Canadian government hopes to duplicate thousands of times over as it embarks on a new immigration policy designed to attract young, preferably large foreign families to rural Canada... and to spread Canada’s multiethnic rainbow across the country’s vast prairies, tundras, and forests.

The urgency of spreading the multiethnic rainbow across the vast nation is counterposed with threatening images of the three multi-ethnic and racially diverse cities (Toronto being “over 60% nonwhite, with 110 different ethnic groups and languages”) as overcrowded, saturated, strained, and threatening to produce a “balkanized” (*sic*) Canada. Drawing on the well-worn settler colonial narrative regarding “the centuries-old dream of populating Canada’s vastness,” the article also notes the more pressing governmental and economic impetus behind these sexual politics of immigration and

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<sup>53</sup> Clifford Krauss. 2002. “Canada Courts Migrant Families to Revive a Declining Hinterland.” *New York Times*. October 2, 2002.

population (from the shrinking tax base, to the imperiled solvency of national healthcare, education, and housing). Noting that “few industrialized countries have so consistently used immigration as a tool for nation-building,” the article goes on to cite current Minister of Citizenship and Immigration Denis Coderre’s declaration that “we need to create more magnets for immigration everywhere...It’s a matter of population growth, labor supply, quality of life, the very future of our country.”

Yet the manifold forms of regulation and monitoring of family ties discussed earlier in this chapter betray the sexual and racial fault lines at work in the sexual regulation of family class immigration. They show how an explicitly heterosexualized imagining of the nation and its immigrants results in practices of selection seeking to sort out the sexually and reproductively fit from the unfit. The threat of “undesirable” sexualities long associated with immigration in eugenicist discourses (Valverde 1991, 108) continues to inform the more celebratory mediated discourse of immigration as the means to replenish and sustain a secure population base. Confirming Luibhéid’s insights regarding how racialized immigrant women’s sexualities are closely regulated as potential threats to national security (2002), Jenny Burman (2007) has examined the case of Patricia Sperling, a Black Jamaican woman with ten children (six born in Toronto) who was served with a deportation order by CIC on the grounds of “prodigious procreation.”<sup>54</sup> The sexualized securing of the population through a racialized and normative reproductive ideal of desirable population growth is central to the biopolitical regulation of immigration in countries such as Canada.

While such governmentalized constructions of the population tend to generate a pro-immigration sexual and economic nationalist discourse in settler nations such as

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<sup>54</sup> The deportation order was later overturned (Burman 2007).

Canada, the next chapter will consider its countervailing yet intimately intertwined counterpart. The sexualized securing of the population encapsulated in the desirable figure of Lidia Tschritter and her hardworking husband has some necessary affective counterparts: the racialized “prodigious procreator,” the highly mediatized figure of the terrorist as an undesirable threat to national security, along with the specter of the mass trafficking of “human cargo.”

## 6 Visa Denied: (Un)Desirable

Sheila James’ experimental video *Unmapping Desire* (1999) is an elegy, at once deeply intimate in its poetics of mourning for an impossible love of a lover half a world away, and deeply political in its lyrical confrontation of the biopolitics of status at work in Canadian immigration policy and its restrictions and inscriptions on the bodies of women from the South. It offers an evocative rendering of the place of affect in the enactment of borders and the longing for free movement. Desire and the governmental production of (un)desirability are deeply embodied and sensual matters here, imprinted and engraved on the skin. Touch, separation, yearning, all are matters of state, of governmental scrutiny and regulation, particularly when they take place between women.

*Born in the South, raised in the North...I found my future opening with your touch. We met in the South, carved out a space, mapping each other’s bodies, pushing boundaries of where, and how deeply to love. We parted with plans to meet in my home. Now, alone, I map my body, the memory of your hands on my skin, left only with the echo of separation.*<sup>55</sup>

An extreme close-up focuses on microscopic folds and crevices of brown skin, gliding along the surface, moving with the contours and curves of an outstretched limb—a haptic image of the sort that Laura Marks shows to be central to many works of

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<sup>55</sup> This fragment, as well as the following italicized fragments, are excerpts of the voice-over narration in *Unmapping Desire* (James 1999).



intercultural cinema.<sup>56</sup> Soon, a line etched into the skin comes into view, a continuous marking that the camera follows along the surface of the skin, until it slowly reveals the tracings of a map inscribed on the back of a woman—a map tracing the geographic fusion of India and Canada. Cut to a chess game being played across the map, on the woman's body, by two rubber-gloved hands—the hands embodying the sovereign power of the immigration agent. The sound of an airplane zooming by overhead.

*Who marked these lines, claimed this territory. It is this hand that constructs borders, dictating who, where, how we love. With suspended breath we wait. Your entry depends on a checklist of points; proof of persecution; a bankbook that boasts millions; your willingness to fit. But he grants no passport, no visitor's visa, no safe passage to bring you here to me. He holds the balance of our future in a stamp.*

Two South Asian women, caught in a moment of intimacy, a naked and sensual embrace, encloded in the privacy of their desire for one another, yet simultaneously on display, transparent to the cold scrutiny of the viewer. One bearing the fused map on her body, the other slowly revealed through the movements of her lover's hand to be bearing another set of inscriptions on her dark brown body. *Rejected. Visa Denied. No entry.*

*Undesirable.* The embodied markings of state racism following the dictates of a sexualized biopolitics that finds nothing productive in the love of a brown girl from the south and a brown girl from the north. Affective and state borders drawn through the administrative brutality of a stamp that materializes a racialized and sexualized calculus of (un)desirability.

The two lovers embrace and begin to wash one another. Washing away the governmental inscriptions, the maps and words that enact the conditions of their enforced

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<sup>56</sup> Marks (2000) traces the development of a distinct haptic visuality in the works of intercultural filmmakers of the 1980s and 1990s. In their use of blurring and extreme close-ups, haptic images invoke a mimetic mode of visuality that evokes a sense of touch, a bodily response and engagement rather than a strictly psychoanalytic identification or semiotic form of representation.

separation, that actualize the borders drawn across their bodies, that limit their capacities for movement from South to North. The maps and markings of undesirability dissolving through touch, desire, imagining.

*We dare not measure the cost of separation. Instead, we choose the victory of imagining borderless countries in a country-less world, where maps are drawings; words, the tools for poetry. And we, like water, can move freely, love deeply, dissolving these borders, and crossing all lines.*

These longings prefigure a political project, one that demands the dismantling of borders that are material, sexual, affective, one that affirms free movement and love.

A final gesture...Her hand glides across her lover's skin, washing away the marks of exclusion. But one final word remains, the root of a prior term of rejection, a single trace of the governmental inscriptions that imposed their fate. Hand glides along skin to reveal the word. *Desirable*.

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CHAPTER SIX

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**SECURITY PERIMETERS, SLEEPER CELLS, AND POROUS BORDERS:  
9/11 AS NEWS EVENT AND IMMIGRATION POLICY “CRISIS”**

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From the first moments that the United and American Airlines planes smashed into the World Trade Center (particularly the crash of the second plane), the media event triggered by the attacks on the World Trade Center in New York City and Washington on September 11, 2001 was fuelled by a tenor, pitch, and accelerated circulation that announced it as a moment of total rupture and exception. For those privileged North American publics accustomed to such moments of spectacular violence as either distant militarized spectacles far from home soil, or as the blockbuster entertainment of Hollywood, the sensation that *it was just like a film, it didn't seem real*, along with the narrative of shattered innocence that soon emerged, signaled the extent of the breach—the shock of a violence previously reserved for other *elsewheres* touching down on home turf; the chasm between the *before* and the *after* suggesting a new set of rules and alignments would now be permissible; the crumbling of a distinctly North American sense of imperial invulnerability. The mediascape constituted through the event was a transnational if uneven one, in which anxieties about migration flows from Canada to the United States became the focal point of news flows that were soon heightened in the converse direction (from the US to Canada).

Amidst the spectacular and highly charged sensory flow of news about 9/11, a series of images, buzzwords and sounds tied to the attacks were sent into overdrive. The most patently fetishized of mediaphemes being, of course, the image of the moments of

impact of the planes hitting the Trade Center accompanied by the screams of bystanders, telephoto shots of falling bodies, and the collapse of the buildings. The intensity of repetition of these images, the fixation on the impact and crash of the falling buildings, amplified into a continual traumatic return to the rupture that the event constituted in North American public memory. These were soon followed by a series of new mediaphemes...the voice messages of people trapped in the burning building sending their last words to family; the first appearance of images of Osama Bin Laden in connection with the event; the sound of a voice announced to be Bin Laden's as various taped messages appeared; the words uttered by Bush "you are either with us or with the terrorists"; the color coded threat level pronouncements by the US government (see also Massumi 2005).

Within 24 hours of the event's circulation via the globalized mediaphemes of a transnational mediascape, a more localized set of phemes began to saturate the Canadian (and to a lesser extent) US mediascapes. They propelled a range of anxious affects regarding the Canada-US border, producing a series of popular linkages between the September 11<sup>th</sup> attacks and Canadian immigration—more specifically Canadian refugee policy. The media's transformation of the story of 9/11 into a story centered on Canadian immigration had major ramifications and governmental impacts on Canadian immigration policy and the im/migrant bodies that became targeted in the process (many of which will be traced out in this chapter.) Before turning to the post-9/11 event, however, it is important to revisit the governmental trajectory that Canadian immigration policy had been taking prior to September 11<sup>th</sup>, 2001. Picking up where Chapters 3 and 5 left off, the 2001 introduction of Bill C-11 underlines the extent to which the governmental response to 9/11 did not unfold in a *sui generis* manner, but instead became

an occasion for the intensification of a larger project in the wake of a series of pre-9/11 events and “crises”, particularly the aftermath of the Fujianese boat landings of 1999.

## 1. Of Open and Closed Doors: Bill C-11

The proposed Immigration and Refugee Protection Act and its regulations carry a dual mandate: closing the back door to criminals and others who would abuse Canada's openness and generosity while opening the front door to genuine refugees and to the immigrants the country needs.

- Overview of Bill C-11, June 2001 (CIC 2001a)

In February of 2001, seven months prior to the September 11<sup>th</sup> attacks in the United States and twenty months after the landing of the Fujianese boats in British Columbia, Citizenship and Immigration Minister Elinor Caplan publicly tabled Bill-C11, the proposed *Immigration and Refugee Protection Act*. In the extensive media coverage that accompanied the introduction of the Act, Caplan emphasized these classic domestic tropes of the nation, the need to open the front door to Canada wider while closing the back door more firmly to abuses.<sup>1</sup> They constituted both implicit and explicit references to the Fujianese migrant boat landings of 1999. This seemingly contradictory articulation of the open, welcoming nation with the besieged, violated fortress nation on guard for abuses of its generosity has come to inform a common biopolitical policy strategy that seeks to carefully select, screen, and regulate the population. Ten months after the events of September 11, 2001,<sup>2</sup> Bill C-11 was passed into law as the *Immigration and Refugee Protection Act* (the IRPA) in June of 2002. As the next two chapters show, the intervening events of 9/11 and the resulting storm of a media spectacle that took place between the Bill's tabling and enshrinement into law were not estranged from the governmental

<sup>1</sup> Gerard Young, “Migrant smugglers face tougher penalties.” *Times Colonist* (Victoria, BC). April 7, 2000, final edition.

<sup>2</sup> Herein referred to by its popular encapsulation as “9/11.”

outcomes and repressive political momentum that propelled the new immigration policy's implementation.

In the wake of the Summer of the Boats and the events that crashed into the mediascape on 9/11, it was the closing of the back door and the fear of "abuse" of Canada as a "generous" host by threatening outsiders that animated much of the Act's formulation and post-9/11 implementation, as can be construed from the title's foregrounding of the matter of "protection." This chapter will consider the biopolitics of protection that have been put into place with the passage of Bill C-11 into the IRPA, while also questioning on whose behalf this protection is offered and underwritten. Immigrant and refugee movements and activist allies have argued that the IRPA emphasizes "the closing of the back door," implicitly constructing immigration as a security risk and codifying an alarmist criminalization of immigration into official policy (CCR 2001a), partially in response to the sense of crisis mobilized around the Fujian Chinese refugee landings.

The mediaphemes of open and closed doors repeatedly invoked to introduce the new IRPA to the public, then, encapsulate Canada's long-standing regulation of the population through an immigration policy that implicitly links the welcoming xenophilia of the open front door (as a strategic national interest) to the unwelcoming xenophobia and sexualized anxieties regarding the closed back door (Somerville 2005b, 350-355). The facilitative biopolitical functions of the IRPA are in fact very much contoured around and produced through the bolstering of its restrictive and exclusionary functions of closure. In effect, the optimistic rhetoric and welcoming gestures celebrating Canada as a benevolent immigrant nation are crucial to the biopolitical functions of Canadian immigration policy. They become central to the production and enactment, not only of value and

desirability as it privileges desirable immigrants and “genuine” refugees over others in the selection process, but also of the exclusion and precarity of those (im)migrants deemed undesirable, refugees deemed bogus, threatening terrorist or trafficked bodies.

This chapter also considers the role played by the media event around 9/11, combined with the governmental outcomes already put in place by the news event around the Fujianese boat landings of 1999, in producing and refashioning an intensified securitized biopolitics of migration in the intervening five years (2001-2006). In particular, the impacts of the “smart border” regime that has been put into place through the combined governmental outcomes of the IRPA and the bilateral *Safe Third Country Agreement* (the STCA) between Canada and the United States will be considered as central to this intensified biopolitics of security. This chapter will show how the amplification of these media events produced an affective climate in which the targeting of terrorist, trafficked, and precarious migrant bodies became central to the governmental policies put into place in their wake. These policies have played a major role in refashioning the Canada-US “smart” border and the routes of migrant mobility across it in ways that have particularly racialized, sexualized, gendered, and economic impacts.

Linking the findings of the earlier chapters on the Fujianese migrant news event of 1999 with the forthcoming two chapters on the 9/11 media event, a key aim of the coming pages is to show how the exceptional measures introduced in the wake of each of these media events were quickly recuperated, governmentalized, and normalized in the subsequent immigration policy measures put into place. In this regard, the media event around the Summer of the Boats was crucial in establishing the precedent of automatic detention that was initially introduced as an exceptional measure for the Fujian Chinese refugee claimants. Prior to that time, detention was not invoked as an automatic measure

for refugee claimants or undocumented migrants seeking entry to Canada to nearly the same extent. The governmentalization of the Fujianese migrant news event in the newly formulated IRPA led to the introduction of widely expanded, routinized procedures for detention and expedited deportation. Detentions rates alone rose over 68% in the four years following the Fujian migrant boat landings (Crépeau and Nakache 2006, 16).

Nandita Sharma nicely summarizes the governmental trajectory of the news event around the boat landings in the following way:

Such treatment was exceptional for refugee claimants, even failed ones, at the time [of the boat landings]. Contrary to prevailing practice, the Canadian immigration department automatically incarcerated the 400 people who arrived on the last three ships. This was extremely popular with the mainstream media and the majority of those phoning or writing in their opinions (McGinnis 2001). Their exceptional detention came to establish a precedent that was ultimately normalized and enshrined in the new...Canadian Immigration and Refugee Protection Act (Sharma 2005, 93).

In this way, the exceptional measure introduced and fuelled by a media-generated moment of affective excess became normalized and implemented in the new detention policies of the IRPA. As we shall see, this biopolitical trajectory from exceptional measures in times of affectively amplified media events to the governmentalization and normalization of increasingly repressive measures has only intensified in post-9/11 securitized immigration policies.



## 2 9/11: Securing the “Crisis” State

### 2.1 9/11 as News Event and the Making of the Canadian Connection: The Affective Problematization of Canada-US Migration Flows

Tighten immigration laws and plug our porous borders

- *Vancouver Sun*, September 12, 2001.

Canada needs tight perimeter: U.S. Ambassador: Day assails nation's lax border security

- Justine Hunter and Tom Arnold, *National Post*, September 13, 2001.

Canada called a weak link: Report critical of border security

- David Pugliese, *Calgary Herald*, September 13, 2001.

Canada 'part of the problem,' report finds: U.S. won't tolerate lax immigration rules and security procedures

- David Pugliese, *Ottawa Citizen*, September 13, 2001.

Weeding out security risks

- James Travers, *Charlottetown Guardian*, September 25, 2001.

Canada must root out fake refugees

- Diane Francis, *National Post*, September 18, 2001.

By its reckless immigration policies, Canada has become complicit in terrorism

- Ron Winters, *Ottawa Citizen*, November 10, 2001.

The production of a Canadian connection to the 9/11 attacks took place in the context of a highly amplified news media event<sup>3</sup> that intensified the linkage between immigration and security through a range of affective tactics. Within a few hours of the 9/11 attacks, a series of buzzwords and catchphrases emerged in Canadian news headlines and on the lips of newscasters—sonic fragments and audiophemes that suffused the aural environment and mediascape: *porous borders*, *the Canadian connection*, *the weak link*, *lax*, *reckless*, *penetrable*. The furor around the porous border was partially sparked by

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<sup>3</sup> I should note here that the forthcoming account of the news event around 9/11 is based on my analysis of predominantly English language corporate media coverage that ran in the four months subsequent to the 9/11 attacks, drawn largely from the *Canadian Newsstand* and *The Globe and Mail* news databases.

accusations launched by US government officials in their search for a Canadian connection to the attacks, displacing their own anxieties about their border policing onto Canada and the Canadian refugee system. These accusations circulated widely in the US mediascape, becoming the focus of an episode of the popular television series *The West Wing* that was written and broadcast within two weeks of the attacks.<sup>4</sup> Breaking records for the highest ratings of the show to that date, one thread of the episode “Isaac and Ishmael” focused on suspected terrorists who had crossed the Canada-US border from Ontario into Vermont (sic), causing protests by Canadian media and even Minister of Foreign Affairs John Manley regarding both the inaccurate geography and the portrayal of Canada as a launch pad for terrorists targeting the United States.<sup>5</sup>

The news media’s continual circulation and repetition of the sound bites “porous borders” and the “Canadian connection” only served to reinforce this performative association between Canadian migration, refugee movements (from Canada to the United States), and the terrorism of 9/11—their constant reiteration and the reverberation of their association staged in ways that produced palpable affects of fear, suspicion, foreboding. Vague reports circulated of phantom-like figures that never materialized, intimated to be small groups or cells of Muslim men, spotted near or attempting to cross the border into the United States in the days following the attacks. The vagueness of the reports and the shadowy nature of their subjects (like the snakeheads in the 1999 boat landings), along with the persistent intimations and insinuations that became permissible in the news media during this period, were key to

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<sup>4</sup> Aaron Sorkin. “Isaac and Ishmael.” *The West Wing*. NBC. October 3, 2001.

<sup>5</sup> Manley criticized that episode of *The West Wing* in a speech given to the US Foreign Policy Association in New York City on November 5, 2001. Québec, not Ontario, borders Vermont. It is also worth noting that *The West Wing* was dubbed into French, and was a popular show in Québec broadcast by Radio-Canada.

the affective associations they produced. Through their very broad, vague, and pervasive tone, as well as their racialized and targeted nature, these affective associations were attached (often violently) to a constantly shifting series of predominantly Muslim/Arab bodies as suspects and moving targets. As Joseph Pugliese has argued, in the post-9/11 context, “figures of Middle-Eastern appearance are spectral, despite their corporeal manifestations...Global in its dimensions, spectacular in its reach, and demonic in its intentions,” this figure of Middle-Eastern appearance is “generated through the intersection of the apparatuses of the state and networked technologies of western media” (Pugliese 2003, 20). In such a manner, the news event around the “Canadian connection” evoked and produced an ever shifting, recombinant phantom terrorist body as a cellular, swarm assemblage— all evoking the spectre of terrorism descending upon Canada and Québec.<sup>6</sup>

Accompanying the aural amplification and intensified circulation generated through such buzz phrases, the media began circulating images of and focusing in on two cases of former refugee claimants with alleged links to organized terrorist cells: that of Algerian national Ahmed Ressay and Syrian national Nabil al-Marabh. The Ressay story was not a new event but had already circulated earlier, when he was caught attempting to smuggle explosives across the Canada-US border in British Columbia in 1999/2000, allegedly in connection to a planned attack on the millennium New Year’s celebrations in the United States. The story was quickly resurrected to proportions that exceeded the initial broadcast of the story. This was less because there were any new

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<sup>6</sup> For another approach to the war on terror as an assemblage centrally marked by terrorist bodies, see Puar 2005. Whereas Puar tends to focus on the terrorist corporeality of the suicide bomber and the turbaned terrorist as singular figures marked by queerness as an unsettling, denaturalizing gesture, I am more interested here in examining how the media’s production of a multiple, networked, cellular terrorist corporeality facilitated the continual shifts between moments of circulating suspicion and the targeting of an ongoing series of bodies marked as Muslim.

developments or any connection to the September 11<sup>th</sup> attacks than because Ressam had been widely publicized as a profiled terrorist who had trained in an al-Qaeda training camp in Afghanistan. In this way, the Ressam story offered a ready-made set of associations that served as a convenient fit for the public and media obsession with locating the terrorists among us, particularly those thought to be filtering across the border from Canada into the United States. The Ressam and al-Marabh stories were quickly hauled out of the news archives to answer the media's corresponding need to put a local face on "terror." Circulating across a transnational mediascape, they became the instant local embodiments of the phantom terror cells announced as the invisible forces behind the attacks. The continuous mediaphemes of phantom apparitions and invisible, lurking threats announced in headlines such as "The mystery of the invisible al-Marabh" performatively produced a foreboding and menacing affective tone that could be localized to Canadian turf.<sup>7</sup>

The news media's amplification of these two cases to proportions that vastly exceeded their significance and impact was taken as evidence of the nation's loss of control of its borders.<sup>8</sup> In "The Trail of a Terrorist," a CBC documentary by Terrence McKenna that was broadcast around the world after 9/11 in such venues as PBS' *Frontline*, former Immigration and Refugee Board Member Bill Bauer is asked what the Ahmed Ressam case says about the immigration system in Canada. He responds, "Very, very few people who are turned down for the refugee claims are actually deported."<sup>9</sup> <sup>10</sup>

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<sup>7</sup> Peter Cheney and Colin Freeze. "The mystery of the invisible al-Marabh." *The Globe and Mail*. October 27, 2001.

<sup>8</sup> See for instance, *The Gazette* (Montréal, QC). "The Canadian Connection." September 12, 2001.

<sup>9</sup> Terence McKenna. "Trail of a Terrorist." *Frontline*, PBS, September 21, 2001.

<sup>10</sup> As Audrey Macklin (2002) has argued, despite its harsher detention policies, the United States has a similar removal rate for outstanding deportation orders to that of Canada, giving the lie to the notion that

The Ressam story was fuelled by a larger transnational media climate centered upon the figure of a floating, phantom-like, all-pervasive enemy that could appear anywhere and at any time, that demanded the need to constantly screen, track, surveil...because the enemy could be anywhere. The affective spiral produced was propelled by a free-floating, limitless and constantly circulating sense of threat, a floating affect that was unevenly attached and displaced onto a range of specific individuals who became (and continue to be) that particular week or month's target of mediatized suspicion. They were almost exclusively embodied in figures of a highly racialized and pathologized Muslim masculinity. The shadowy, elusive, free-floating phantom figure of "the Canadian connection" was thereby localized and displaced (in fact continues to be displaced) onto particular men in a highly volatile and racialized manner, regardless of their citizenship status—from Project Thread, Maher Arar, the Khadr family, to the most recent manifestation with the spectre of "home grown terror" in the June 2006 arrest of 17 Muslim men alleged to be part of a terrorist cell in Toronto.

In the national mediascape, this affective spiral of suspicion and fear was also disproportionately directed towards Canadian immigration in general and refugees in particular, specifically those of Middle Eastern, North African, and South Asian origin. This effectively placed the entire governmental apparatus of immigration in the media crosshairs, a target of generalized suspicion that intensified the scrutiny of governmental policies as well as the movements of specific migrant bodies. One particularly notable

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harsher enforcement policies necessarily correlate with fewer non-status migrants in the country (389). Both countries have approximately 15% removal rates on outstanding deportation orders (402).

media site for the amplification of this targeted anger was radio call-in shows. The offices of Citizenship and Immigration Canada were flooded with hate mail.<sup>11</sup>

The affective pitch of pervasive fear and generalized suspicion, along with the shattered sense of rupture with which it crashed into the North American mediascape (*nothing will ever be the same again*), unleashed a particular momentum and temporality to this news event. The color-coded threat levels announced by the newly formed United States Office of Homeland Security<sup>12</sup> and broadcast throughout the North American media acted as continual indicators of the momentum of a media event with no real end or closure, just an endlessly modulated sense of crisis. This governmental modulation of threat levels also served to affectively modulate the social circulation of fear—a fear that could shift from low to high level according to the announced imminence of the threat, but that could never be completely absent, demanding as it does a constant vigilance and trigger-happy preparedness to react to apparent or perceived threats. The promise of a future without fear in some *other* time, some continuously deferred “after,” serves to maintain a constant circulation of fear in an endless “now,” the only variation being its momentary intensity.

This modulated affective climate constantly shifts between movements of generalizing suspicion, when the phantom enemy is everywhere, to specific moments of targeting and attachment to specific bodies, when a new round of terror arrests are announced. The floating affects of suspicion and insinuation shifting into a targeted anger and vengeance against a changing cast of racialized suspects, their bodies, lives, and

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<sup>11</sup> Jack Aubry. “Caplan flooded by ‘ugly’ hate mail: Racist letters blame minister for immigration policies.” *Ottawa Citizen*. December 7, 2001.

<sup>12</sup> The creation of the Office of Homeland Security was announced by US President George Bush within nine days of the 9/11 attacks. The color-coded Homeland Security Advisory System was inaugurated six months later in March of 2002. The Office of Homeland Security was transformed into the Department of Homeland Security in January of 2003.

communities bearing the force and brunt of that process of affective attachment.

According to Sara Ahmed (2004), the social circulation of fear produces its own targets in a racialized manner, sticking to some (racially marked) bodies and not others (92-100). It is through what Ahmed calls the “stickiness” of circulating affects (89, 97), the process of affective attachment of fear to racially and ethnically marked bodies, bodies marked as “other” or threatening, that the biopolitical marker between the us and them, the population who must live and be protected, and the threats who must be eliminated (the “them” of necropolitics), is drawn. In this sense, affect plays a critical role in the biopolitical marking of collectivities, in defining and surfacing a securitized politics of population.

At the People’s Commission on Immigration Security Measures in the spring of 2006,<sup>13</sup> Halima Mautbar of the Canadian Council on American-Islamic Relations (CAIR-CAN) testified as to the impacts of post-9/11 immigration security measures on Canadian Muslim communities, evocatively capturing the process through which the circulation of these racialized affects of fear, suspicion, and threat have become attached to an ongoing series of Muslim men targeted and marked out from the population at large:

*Since 9/11, our communities have been living within a climate of fear. In the immediate aftermath of the horrific terrorist attacks in New York, police noted an increase in the amount of hate crimes directed towards Muslims and Arabs. CAIR-CAN (Canadian Council on American-Islamic Relations) received 110 complaints of hate crimes within the three months following the attacks. A survey done by CAIR-CAN in the year after 9/11 showed that 60% of the community experienced an anti-Muslim incident (most often verbal harassment, racial profiling or workplace discrimination); while 82% knew someone who had experienced an anti-Muslim incident. This means that virtually the entire community was*

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<sup>13</sup> The People’s Commission on Immigration Security Measures was organized by Montréal-based migrant rights groups and individuals from some of the communities most targeted by immigration security measures. It convened three days of public hearings that heard testimony from 60 individuals on the often devastating effects of immigration security targeting on their lives.

*negatively impacted. (It is also important, however, to note that the survey found 60% also experienced an act of kindness or support from fellow Canadians.) At that time, Islamophobia also increased in the media.*

*[This has resulted in a multiplication of]...cases of Muslims who have been wrongly targeted by national security investigations. Consider, for example, the cases of Liban Hussein (Mr. Hussein was wrongly accused of terrorist financing and given a settlement by the government after he lost his business due to the mistaken allegations); Mohamed Attiah (an engineer at a nuclear facility who lost his job after security officials visited him at work, he was also given a settlement by the government); Kassim Mohamed (Mr. Mohamed was interrogated in Canada and also detained in Egypt—all for making a tourist video of the CN Tower for his children, who missed Canada); Bhupindar Liddar (Mr. Liddar lost a diplomatic posting abroad because he was denied security clearance by CSIS for supporting “Arab causes,” suggesting the spy agency has made legitimate political views criteria for being terrorist suspects and identifies individuals as security threats on that basis); the 21 victims of Operation Thread (21 foreign students from Pakistan were accused of being a terrorist cell in Toronto and publicly labeled as such, when in fact they had committed nothing more than minor immigration infractions. They were deported back to Pakistan with the terrorist label still hanging over their heads, and some have never been heard from since.)—to name a few of the highly publicized cases of wrongful targeting.*

*There are also the frightening cases of Canadian Muslims who were investigated by CSIS and the RCMP in Canada, and were subsequently tortured in Syria, raising the possibility that Canadian officials might be operating a policy of having terror suspects tortured abroad. The most infamous of these cases is that of Maher Arar—a case which every Canadian Muslim and Arabs knows well. Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin all experienced similar ordeals to that of Mr. Arar.*

*And increasingly common were the complaints of people being harassed at borders and airports. For example, people would file complaints with CAIR-CAN about being arbitrarily detained, often missing flights. Some complainants allege they were threatened with deportation. Others say they were asked ridiculous questions, such as one complainant at a border stop who was asked if he had “rocket launchers” in his vehicle. In Ottawa shortly after 9/11, a Muslim activist was told to get off a plane and to “understand” where police are coming from. CAIR-CAN has also received numerous complaints of how Muslims and Arabs are being treated by CSIS and the RCMP during interviews and interrogations.*

- Halima Mautbur, CAIR-CAN (Mautbur 2006)<sup>14</sup>

Mautbur’s testimony captures some of the cumulative effects of a specific affective register that was mobilized through the news event around 9/11. In her own testimony at the People’s Commission on Immigration Security Measures, Latifa Charkaoui said of her son, security certificate detainee Adil Charkaoui (whose case will be discussed further

<sup>14</sup> Mautbur, Halima. 2006. “Impact of Security Certificates on the Muslim Community.” People’s Commission on Immigration Security Measures. April 21, 2006. Montréal, Québec. Testimony available at: <http://www.peoplescommission.ath.cx/materials.php>.



below), “On l’a accusé de rien, c’est que des soupçons, juste des soupçons...”<sup>15</sup> This aptly and qualitatively captures the *affective biopolitics of the war on terror* that coalesced through these events. The affective register of counterterrorism that has emerged is not just one of fear, but of a circulating affective spiral of suspicion and insinuation that alternates with an active targeting of particular bodies in specifically racialized ways. It has manifested itself most blatantly in the practices of security profiling Mautbur mentions. As Mautbur’s and Charkaoui’s testimony suggest, this affective circulation of suspicion has had dramatic impacts on the lives of those it has profiled and targeted.

The politics of alternating suspicion and targeting in the post-9/11 “war on terror” suggest that a more critical appraisal of the role of affect as something other than a purely affirmative force is called for. In contrast to the optimism of more affirmative theoretical accounts of the place of affect in a transformative politics,<sup>16</sup> what becomes clear from the affective biopolitics of 9/11 is the extent to which affect became an effective, dangerous means of marking out, regulating and targeting racialized migrant bodies. The moments of vague, circulating suspicion in the media were nonetheless targeted in both their intents and effects. Yet they were effective precisely because they operated through moments of generalized suspicion and insinuation, of targeting without explicitly naming or identifying.

In this way, affective associations became a key means through which the news media are able to effect racialized forms of targeting and profiling without necessarily resorting to overt racism. The news media’s mobilization of affect in a news event can

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<sup>15</sup> “He has not been accused of anything; all that is presented are suspicions, just suspicions.” Charkaoui, Latifa. 2006. Testimony. People’s Commission on Immigration Security Measures. April 21, 2006. Montréal, Québec.

<sup>16</sup> This is not to downplay the affirmative potential of affect in transformative political movements, which I do gesture towards at several other points in this text (the postscript, and the closing sections of Chapters 2 and 3).

allow them to bypass contentious or explicitly racist formulations by circulating images (approaching rusty cargo ships), sound bites (“sleeper cells”), and other mediaphemes that do the work of disclosing without explicitly naming. At certain, critical points in the media build-up, the amplifying sense of suspicion and the mounting sense of anticipation and momentum would peak in an abrupt shift to an overt moment of targeting (often the latest round of terror arrests). Yet it is the media’s modulation of affect in the prior build-up that makes the more overt moments of explicit, racialized targeting possible. The affects elicited through the circulating mediaphemes of the “war on terror” became a means of mobilizing the unspoken, of bypassing what cannot be explicitly said or named. Affect becomes a means of focusing on and targeting migrant bodies without necessarily naming or visualizing them.

The affective biopolitics of the post-9/11 media event have been crucial to the emergence and intensified practice of a “counter-terrorist” governmentality. Post-9/11 suspicion and fear have become a key means to manifest and make public a certain politics, a politics that depends upon and requires a constant sense of crisis. Crisis has become the currency of this securitized biopolitics, a key strategy for winning in the attention economy that governs the current mediascape. The political effects of this ongoing modulation of crisis in the post-9/11 governmentality of security and migration will be closely considered in coming sections.

## **2.2 Post 9/11 News Discourses of Canadian Immigration: Immigration Policy as a Weapon in the “War on Terror”**

With the bombardment of mediaphemes associating 9/11 and Canadian migration—*porous borders, terrorist cells, the Canadian connection, bogus refugees*—the spectre of

the lying, false refugee claimant once again took center stage with the Ressam and al-Marabh stories. A new set of affective *énoncés* (statements) emerged through the event, shadowing the earlier *énoncés* produced in 1999 with the Fujian boat landings, but with a new variation. The illegal migrants of the 1999 event—the lying economic migrants sneaking in to take advantage of the “illegal” underground economy—had become menacing and dangerous terrorists out to abuse and exploit the generosity and naïve openness of Canadian immigration policy for an ominous Islamist war against Western civilization. The transnational Asian organized criminal trafficking networks of snakeheads had become the transnational terrorist sleeper cells that could be activated and strike at any moment. The *énoncés* linking illegality, false claimants, and terrorists networked in shadowy terror cells proliferated, propelled by the affective momentum created through the news media event.

Terrorist settles in Ont. as deportation efforts drag on

- Chris Cobb, *Edmonton Journal*, October 3, 2001.

CSIS says new law gives better shot at possible terrorists: Proposed legislation would provide quicker security screening of refugee claimants and streamline process of deporting any threats

- *Guardian* (Charlottetown, PEI), October 2, 2001.

Canada must be on a war footing

- Diane Francis, *National Post*, September 25, 2001.

Canada still playing host to terrorist after 15 years

- *The Province* (Vancouver, BC), October 4, 2001.

Unleash CSIS

- *National Post*, October 15, 2001.

Terrorist's presence black mark for Canada: Failure to deport wrong message to allies—Alliance

- Chris Cobb, *Edmonton Journal*, October 4, 2001.

MP slams 'weak' refugee process

- *The Province* (Vancouver, BC), October 4, 2001.

Ottawa zeroes in on refugee claimants

- Campbell Clark, *The Globe and Mail*, October 13, 2001.

The terrorist who's still next door

- Margaret Wente, *The Globe and Mail*, October 13, 2001.

Refugee claimant allegedly plotted blasts

- Adrienne Tanner, *The Province* (Vancouver, BC), November 30, 2001.

Deport economic refugees, MP says: Immigration accord with U.S. needed

- Robert Fife, *National Post*, November 30, 2001.

The news media's production of this phantom terrorist body as sleeper cell contributed to the generation of a climate of *profiling*—the media's profiling closely following and informing the state/governmental practices of racialized profiling being put into place. The production of a terrorist subject—or more accurately, an ongoing series of momentary instantiations of a mobile and multiple terrorist body—operated through a highly labile set of framings oscillating between invisibility and hyper-visibility, through shifting moments of suspicion and identification.<sup>17</sup> A mere association through police suspicion, implied community links, allegedly odd behavior, and often just the vagaries of a presumed Muslim or “terrorist look-alike” appearance (Puar 2005, 132-133), seemed to be enough to transform a series of figures into the prime subjects of media profiling. The governmental links between the securitized state and the media became increasingly blurred, as an endless parade of “security” and anti-terrorism experts from government intelligence bodies (CSIS, the RCMP) were interviewed in the media, offering what was presented as insider, authoritative intelligence that came to publicly define and frame this

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<sup>17</sup> Like the transnational snakehead networks of the Fujianese boat landings, this was a shadowy, networked, foreign and foreboding presence. Yet unlike the media event of 1999 where the snakeheads remained a largely invisible presences, this phantom menace could at any moment become embodied in a hyper-visible manifestation of the latest series of suspects to be detained or arrested, their faces splashed all over the media.

phantom terrorist body. This was constantly counterposed to the other key actors that anchored the larger media narrative of 9/11—the victims and their families, the vanished bodies and grieving loved ones. The stories of their last contacts and messages constituted the core that stabilized the narrative of Canadian and global identification and sympathy with the United States (*we are all Americans*) in a newly emergent war on terror.

The momentum of endlessly modulated crisis generated through the media shaped the narrative constituted around the event—a suspended narrative of constantly unfolding moments of conflict, with no ultimate denouements or closure, just a new series of targets without resolution. Ultimately, the narrative produced became that of *endless war*: a perpetual militarized vigilance and action folding everything into itself—a new “global, terrorist-based war,” as former chief of strategic planning for the Canadian Security and Intelligence Service (CSIS) David Harris puts it in the “Trail of A Terrorist” documentary, in which “we have to get our laws and our attitudes into line to meet the threat before it’s too late.”<sup>18</sup> This desired alignment between governmental laws and attitudes operated through the affective modulation of terror, as signaled in the widespread narrative slip from a “war on terrorism” to a “war on terror”...a war whose closure must be endlessly deferred. Everything, from the presumed luxury of classical liberal notions of civil liberties to immigration, was subsumed into the perpetual momentum of war. In perhaps the ultimate expression of the newly articulated biopolitics being put into place, immigration policy became framed, not just as an instrument of security, but of global war; a war for a deferred security that authorized intensified practices of exceptionality from legal and cultural norms. A war that escalated and transformed prior practices of legal exceptionality into new norms.

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<sup>18</sup> Terence McKenna. “Trail of a Terrorist.” *Frontline*, PBS. September 21, 2001.

The lines of force generated through the news event articulated the emerging series of terror suspects inaugurated with the media's resurrection of the Ressam and al-Marabh cases to longer-standing discourses of bogus refugees, reshaping the phantom infiltrative presence of 1999's snakeheads into the terrorist cells of al-Qaeda. In turn, the discourses that emerged around the *terrorist sleeper cell* and the *bogus refugee as terror threat* converged in a wider discursive formation regarding the *porous border*. The return of the "porous" or leaky border also served to articulate this event with longer-standing narratives of migration figured through water metaphors (waves, floods, flows) in ways that ultimately call upon governmental intervention and enforcement (stopping the flood, plugging the leak, turning the tap off). At the same time, it was employed to draw on both newly emerging and pre-existing political agendas to advocate for specific enforcement measures that gained a new momentum for implementation with the amplification of the event. The emphasis on the porousness of the border placed border security policies firmly at the center of the unfolding problematization. Yet this was a newly expansive and distributed border, a continental and even global border diffused beyond the customary physical markers of the Canada-US border to encompass the potentially global and omnipresent movements of the phantom terrorist cells framed as the source of insecurity. Insecurity becoming synonymous with porousness and penetrability.

Ottawa must plug holes in penetrable policies

- Jon Ferry, *The Province* (Vancouver, BC), September 18, 2001.

Ottawa must act to mend porous border to U.S.: Amalgamation of CSIS and RCMP first corrective step

- Diane Francis, *National Post*, September 27, 2001.

It's past time to plug the gaps left by the Ressam case

- Edward Greenspon, *The Globe and Mail*, September 25, 2001.

A moratorium on refugee landings is vital for Canada

- Diane Francis, *National Post*, October 11, 2001.

Leaky border fears not new, documents show

- Tim Naumetz, *Times Colonist* (Victoria, BC), November 7, 2001.

Predictably, the renewed problematization of “porous borders” and the affective amplification that accompanied its intensified circulation in the media triggered a massive public outcry and call to “*plug our porous borders*” and tighten immigration and refugee laws. Anxieties around the penetrable national body in the so-called “aftermath of terror”<sup>19</sup> implicitly presaged and invoked intensified repressive governmental policy measures as the effective means to “plug” the leaks and porous flows. At the same time, an economy as highly interdependent on the movement of bodies, goods, and international trade (with the United States in particular) as Canada’s posed a serious challenge to the scenarios of tightened or halted migration that were being trumpeted.

Journalists and commentators to the right of the political spectrum navigated the contradictions in their own discourses by advocating tighter integration and rapprochement with the United States on foreign policy, security, and immigration fronts—particularly though such measures as a continental security perimeter. Indeed, as in the case of the Fujianese migrant news event of 1999, right wing commentators such as Diane Francis, Norman Spector, Barbara Amiel, George Jonas, and James Bissett (who joined the right wing think tank the Fraser Institute in January 2002) were among the most prominent, loud, and highly pitched voices to surface in the post-9/11 news event. This speaks to the positioning, capacity, and exceptional responsiveness of right wing commentators who occupy some of the key editorial positions in the Canadian media in

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<sup>19</sup> *Windsor Star*. “Aftermath of Terror: Attack on America.” September 13, 2001.

such moments of crisis. It also speaks to the disproportionate role they tend to play in shaping the affective momentum and pitch of spectacular news events in ways that strongly affect the course of governmental measures proposed as solutions to the problematizations they propel.

The Canadian Connection: Critics say Ressam trial, with its Montreal links, highlights our susceptibility to terrorist activity

- *The Gazette* (Montréal, QC), September 12, 2001.

Mounties still mum on terror suspect's Canada connection: Identification investigation continues

- *Halifax Daily News*, September 22, 2001.

Canada a perfect haven for bin Laden: Terrorist could gain refugee status, housing and welfare

- Diane Francis, *National Post*, November 22, 2001.

Soft on terror

- *National Post*, October 1, 2001.

Toothless, at home and abroad

- *National Post*, September 25, 2001.

Immigration policy in tatters

- Diane Francis, *Guardian* (Charlottetown, PEI), September 17, 2001.

Board games: A handy guide on how to lie and deceive your way into Canada through a flawed and willing refugee 'screening' system

- Lubomyr Luciuk, *Ottawa Citizen*, September 25, 2001.

Refugee claimants must be screened cautiously, quickly: Canada must make it harder for ex-cons to even make a claim

- Paula Simons, *Edmonton Journal*, October 27, 2001.

A key and closely related discursive formation to emerge was that of the “*Canadian connection*” to the 9/11 attacks, deemed to be an inevitable outcome of the lax Canadian immigration system. In the CBC documentary “Trail of a Terrorist,” former CSIS chief of strategic planning David Harris proclaimed Canada to be “an Islamic extremist



aircraft carrier for the launching of major assaults against the United States mainland.”<sup>20</sup> Canada was figured as the “weak link” that led to the attacks, a “safe haven” welcoming terrorists and a “staging ground” for terrorist acts. The discourse of the “Canadian connection” converged with that of the bogus refugee to become particularly centered on refugee class immigration. As a result, refugee policy and the refugee determination system bore the brunt of scrutiny and the outrage generated by the amplification of the Ressam and al-Marabh cases in particular.



Figure 6.1: *The Gazette* (Montréal), September 12, 2001

In much of the anglophone media, ongoing polemics against Québec and francophone sovereignty added an additional twist to this discursive formation. The “Canadian connection” became a “Québécois connection,” and the lax Canadian

<sup>20</sup> Terence McKenna. “Trail of a Terrorist.” *Frontline*, PBS. September 21, 2001.

immigration system became a lax Québécois system attributed as the fault of Québec separatists. According to Diane Francis in her commentary “Immigration Policy in Tatters”:

Our government has allowed in terrorists from Asia, the Middle East and North Africa by the hundreds, if not thousands, as bogus refugees or immigrants. Montreal has turned into a hotbed of francophone Arab terrorism, thanks to Ottawa granting Quebec a great deal of control over immigration. The secessionists, who control that province, have made francophone immigration a priority. But they have not done their homework...Sadly, the result is that Montreal has now become a staging ground for Arab terrorism. Vancouver and Toronto have also become centres of Sikh and Tamil terrorism as well as meccas for Mafiosi from Russia, China, Vietnam and Korea...Quebec continues to rubber stamp anyone with two legs just because they speak French.<sup>21</sup>

Francis’ hyperbolic articulation and collapsing of national enemies encourages an affective association between Québécois francophone separatism and francophone Arab terrorism in a way that borders on suggesting that Québec separatism is responsible for the 9/11 terrorist attacks.

Taken together, these discursive formations contributed to an overarching, intensified articulation of *Canadian migration* with matters of *security*. One of the central governmental projects to emerge as a proposed solution to this problematization was that of the continental *security perimeter*, whereby an enhanced North American continental integration and an increased Canada-US rapprochement would bring about shared security and border functions. This recrudescence of matters of *(in)security* and *protection* with respect to immigration policy were central to the new articulations of biopolitics produced through this event.

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<sup>21</sup> Diane Francis. “Immigration policy in tatters.” *Guardian* (Charlottetown, PEI). September 17, 2001.

### 3 Security Perimeters and Problematizations: The Governmental Reconfiguring of a “Smart” Border

Refugee System is a Danger

- Paula Simons, *Times Colonist* (Victoria, BC), Oct 28, 2001, A1.

As detailed in the preceding section, the post-9/11 news media event produced an effective and highly amplified problematization of Canadian immigration policy as an inherent security risk and a key front in the newly announced “war on terror.” The news media largely responded to the spectre of a biopolitical threat posed by a phantom terrorist body it had helped to produce by calling for a larger securitization of Canadian migration flows. The effects were immediately consequential. Amidst the massive outcry to plug our porous borders that resonated across the Canadian mediascape, the Canadian refugee policy apparatus, in particular, came under concerted attack, precipitating a crisis of legitimacy in the system.



Figure 6.2: *Vancouver Sun*, September 12, 2001

This led to immediate governmental moves to tighten immigration, refugee and border policies more generally. The problematization of security in relation to migration

provoked by the post-September 11<sup>th</sup> media event created the grounds for the rapid introduction of a wide array of new policy measures aimed at plugging the “porous border.” In the immediate aftermath of the event, in October of 2001, CIC announced the implementation of enhanced “front-end” security screening of refugees, new identity cards for immigrants (the Maple Leaf Card), new preventative detention measures, the impending new Smart Border Accord with the United States, increased border patrols by the US, and heightened targets for removal rates, screening, detention, and deportation of “undesirable migrants” (CIC 2001b).

Both the post-9/11 and the 1999 news event around the Fujian Chinese boat landings worked to provoke waves of anger and anxiety about the US-Canada border, in which Canada was depicted as the weak continental link through its seemingly unidirectional porous border. In the post-9/11 context, migration and refugee policies became just one of the targets of outrage raised by a larger event and wider governmentalization of security. In the case of the Fujian boat landings, it was the mediatization of the event of migration in and of itself that set off waves of racialized outrage. While both news events played on anxieties about the porous border between Canada and the US, the uproar around the boat landings framed the United States side of the border as a magnet drawing migrants to it, while Canada’s western coastal border became the weak link. In the case of the media event around 9/11, the Canada-US border was framed as a dangerous sieve due to the laxness of Canadian authorities. In neither case were questions raised about any perceived laxness of US border authorities in allowing the entries at their border posts, tellingly indicating the asymmetrical and unidirectional manner in which the discourse of porous borders functions in political debates about Canadian migration.

Several governmental discursive formations coalesced and came into force in the post-9/11 period in ways that crucially shaped the policy measures that were put into place. One of the predominant ones, both in the media and politically, was a proposed North American *security perimeter*, a project proposed by conservative commentators and security “experts” to shore up anxieties around Canada’s “loose” mastery of its borders by creating a continental security fortress, ultimately reshaping Canadian sovereignty into a form of satellite or distributed sovereignty with that of the United States. In an article entitled “Continental Perimeter: Just get on with it,” a *Vancouver Sun* editorial argued:

While there's no evidence that any of the terrorists used Canada as a base, there's enough—and has been for years—to suggest our border controls aren't as secure as they could be. Apart from the 27,000 failed refugee claimants who've disappeared underground in the past five years, we also have about 350 known terrorists on our soil, according to security agencies. There are also many suspected terrorist organizations raising money here. Well-documented stories abound about the laxity of our immigration and refugee laws as well as the sloppy way they're administered. These stories don't inspire confidence in Washington that Ottawa's doing all it can to prevent terrorists from entering the U.S. through Canada. If Canada fails to make our immigration laws and security measures as tough as the Americans', we may be seen as a safe haven from which to launch an attack on the U.S. And we'll also see a tightening of U.S. border controls, far beyond what we're seeing now. Rather than keeping up the appearance that it's reluctant to give up Canada's sovereignty, Ottawa must take measures to really exercise its sovereignty by preparing proposals for the continental perimeter that underline Canadian values.<sup>22</sup>

It is significant here that in one of the few mediatized statements to openly acknowledge that Canada did not in fact act as a “staging ground” for the 9/11 attacks, that there was in fact *no* evidence of a “Canadian connection”, the mere *potential* that there could have been is presented as sufficient and necessary grounds to move forward with a Canada-US security perimeter and border integration. This points to the ways in which the emerging biopolitics of security that coalesced through the 9/11 event came to largely be

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<sup>22</sup> *Vancouver Sun*, “Continental perimeter: Just get on with it.” November 6, 2001.

articulated around a logic of potentiality, in which the mere or suggested potential for an event to occur is affectively rendered by the media, politicians, and the security apparatus and comes to be the focal point of governmental and policy actions. Suggestion, implication, and insinuation loom large here, carrying an effective power when coupled with the amplificatory capacities of the media that can have tremendous power to orient political actions and agendas.

Interestingly, while the security perimeter as a practical policy has not come to pass at the time of this writing, and remains a far-off project for its conservative proponents, its political and discursive contours have strongly shaped the policy measures that have followed in its wake, such as the *Safe Third Country Agreement* (examined in Section 3.2). Audrey Macklin has further noted how the very vagueness and imprecision of the “security perimeter” discourse, its elasticity as a policy term (like much security-related terminology and discourse), allows it to perform a specific kind of affective work within the climate of fear through which it was mobilized. According to Macklin,

When I could not discern a consistent definition for the terms [“security perimeter”], my next response was to wonder what work was being done by an expression so manifestly imprecise. I have since come to view the “security perimeter” as a discursive security blanket, one that furnishes comfort by conjuring up a visual image around which people can deposit their anxieties... The vagueness of the term is one of its virtues, for it has the capacity to mutate into whatever is required to perform its task of reassurance (Macklin 2002, 386).

Macklin’s response is suggestive of the extent to which governmental security policies are framed as performing an affective role in the creation of reassurance and confidence in a climate of politically amplified insecurity.

Another governmental discursive formation that came into full force, closely tied to the specter of the bogus refugee using false papers to abuse Canadian generosity, was the call for a crackdown on identity documents. The Ressam story was only the first in a

series to focus upon and amplify the use of false documents as an inherent threat to governmental tracking and monitoring of identity in an increasingly global society of control. The fact that Ressam had falsified a Québec baptismal certificate to obtain a Canadian passport under a false name only contributed to the specter of a Québec connection.<sup>23</sup> As former CSIS strategic planning chief David Harris put it in the CBC documentary “Trail of a Terrorist,” “The lessons of Ressam are many, and many of them are quite scary...The passport control and regulation aspect is unbelievable...This is an invaluable document to international terrorism.”<sup>24</sup> On the PBS *Frontline* website for “Trail of a Terrorist,” a report entitled “Crossing Borders: How Terrorists use Fake Passports, Visas, and other Identity Documents” cites the “terrorism expert who investigated Ressam’s terrorist cell” Judge Jean-Louis Bruguère, who states, “For these groups, documents are as important as weapons” (*Frontline*, PBS, 2001).

In this emerging biopolitical rendering of the society of control, false documents become tantamount to weapons, and the monitoring and regulations of governmental identity papers become a matter of war. The fact that refugees often have to flee without documents or employ falsified documents to escape violent conflicts and political instability<sup>25</sup> is eclipsed by a biopolitical wartime imperative that inherently equates false documents with illegality and an aggressive war against freedom.

A final governmental discourse that has become key to immigration policy shifts following 9/11 relates to the changing, enhanced role of exceptional and preventative immigration policy measures in an emergent biopolitics shaped by the proclaimed war on

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<sup>23</sup> Baptismal certificates were subsequently disqualified as admissible documents for Canadian passport applications.

<sup>24</sup> Terence McKenna. “Trail of a Terrorist.” *Frontline*, PBS. September 21, 2001.

<sup>25</sup> It should be noted here that the increasing need for refugees fleeing conflict zones to employ false papers can also be correlated to the international enhancement of preventative interdiction measures, as I will examine further in section 3.2.

terror. The rearticulated biopolitics that surfaced in this period functions along increasingly virtual modes of operation. Biopolitical exercises of power increasingly target the field of potential events—in an often explicitly racialized manner. If a refugee claimant is deemed a flight risk (as was the case with the Fujian Chinese claimants in 1999) or if they do not have identification documents, they must immediately be preventatively detained. If a Muslim non-citizen is associated with an alleged terrorist network, no matter how circumstantially or tangentially, by a CSIS informant or media report that may or may not provide accurate information, they must automatically be detained under a security certificate or other exceptional measure that suspends the customary liberal democratic laws of due process in favor of secret evidence, indefinite detention, and so on. In each of these cases, it is the presumed potential for an act, not the actual act itself that is targeted for preventative enforcement measures, based on a biopolitical cleavage between those who must be protected (“society at large”) and those who are constituted as racialized threats. The increasingly virtualized forms of policy regulation in this security biopolitics are also evident in the enhanced interdiction measures that have been brought into effect through such policy shifts as the *Safe Third Country Agreement* (further discussed in 3.3).

In the perpetual, suspended crisis mode that marks post-9/11 political temporality, the states of exception that define the contours of law in liberal democracies are increasingly invoked and relied upon, to such an extent that what were previously considered exceptional measures become normalized. In the recent biopolitics of migration, the ultimate normalization of these exceptional measures shows the extent to which perpetual crises are not so much actual crises but a means of publicly implementing an increasingly repressive and anti-democratic form of securitized politics.



Such is the case, for instance, with the increasing reliance on and practice of “extraordinary rendition” to torture, as will be further discussed in 3.1.2. In this way, immigration measures become weapons in a wider war that justifies their increasing reliance on preventative enforcement and the normalization of states of exception that define the biopolitical cleavage between citizens and non-citizens.

These increasingly preventative policy measures were implemented in an affective climate in which the full force of the fear and fury that circulated through the mediascape became directed, firstly, at those bodies that appeared suspicious, terrorist-appearing (code for Muslim/Arab/South Asian/refugee) (Puar 2005), and secondly, at governmental authorities interpellated as the (failed) protectors responsible for any security breaches that had or would place the public in peril.

In the remainder of this chapter, I focus on four of the key governmental trajectories that emerged out of the post-9/11 media event—newly introduced immigration policy measures and practices that were closely tied to the governmental discursive formations just outlined. In addition to the newly introduced *Immigration and Refugee Protection Act*, I will particularly focus on the *Safe Third Country Agreement* (STCA) and its reconfiguration of a “smart border” as part of the Canada-US Smart Border Accord. I will offer brief encapsulations of policies that each constitute complex subjects in their own right—each with rather massive implications. It should be noted that these transformations in the immigration regime were linked and articulated to a much wider governmental arsenal of policy changes related to the new biopolitics of security, most notably the *Anti-Terrorism Act* (Bills C-36 and C-42) that was fast-tracked through Parliament to become Canada’s first anti-terrorism legislation in December of 2001. Respectively then, I will consider the new IRPA, the specific security measures it

introduced and entrenched, the STCA, and the creation of the new Canadian Border Services Agency.

### **3.1 The Foreign National and the Immigration and Refugee Protection Act**

As indexed by the flood of hate mail received by Citizenship and Immigration Canada immediately after 9/11,<sup>26</sup> a besieged immigration department scrambled to find a rapid strategy to demonstrate the “integrity” of the system to the public. By the beginning of October 2001, Elinor Caplan attempted to fast-track Bill C-11 through the Senate committee on social affairs that was conducting hearings on the Bill, with the support of RCMP and CSIS officers who testified in support of the fast-track. However, the attempt to push the Bill through was refused by the Senate Committee. A Conservative senator sitting on the Committee argued that “the minister is taking this position to give Canadians a sense that they are doing something instead of doing nothing.”<sup>27</sup> While the fast-track was blocked, the impetus behind this attempt to accelerate the passage of the new *Immigration Act* is significant. The rush to pass the Bill clearly demonstrated that the animating momentum of the new policy was less the stated goal of “opening the front door” wider to immigrants and refugees, and more about *being seen* to be slamming the back door as visibly and quickly as possible. The need on the part of those who govern to be seen to be doing something, to be adequately “tough” on migration flows through the formation of policy measures that keep them “under control,” speaks to the staging and *mise en spectacle* of immigration policies. In such political moments, immigration policies function as forms of image management on the part of

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<sup>26</sup> Jack Aubry. “Caplan flooded by ‘ugly’ hate mail: Racist letters blame minister for immigration policies.” *Ottawa Citizen*. December 7, 2001.

<sup>27</sup> Sheldon Alberts. “Caplan, senators clash over bill.” *National Post*. October 5, 2001.

governmental powers insofar as they offer the appearance of “toughness” whether or not they are ultimately effective in their stated goals (Martinez 2003). Despite the initial refusal of the fast-track, Bill C-11 came into force as the new *Immigration and Refugee Protection Act* on June 28, 2002, 9 months after the 9/11 attacks.

With respect to the “front door” that operates as the organizing figure for the facilitative/selection functions of the IRPA, the Act maintains the discursive policy categories that distinguish independent class, family class, and refugee class immigration, with the attendant biopolitical forms of state racism and sexualization that organize and distinguish the different classes of immigration (see Chapter 5). However, the dominant economic logic that defines the distinction between these categories, as well as the means through which they become sexualized and racialized, takes on a distinctly neoliberal bent in governmental rhetorics around the biopolitical role of Canadian immigration in population and economic growth. In introducing the Bill, Caplan’s framing of the Act as seeking to attract “the world’s best and brightest” to come to Canada while curbing abuses of its generosity succinctly encapsulates these neoliberal utopics, as does a CIC overview document of the IRPA that discusses the “Reasons for a New Law”:

Canada needs young, dynamic, well-educated and skilled people. It needs innovation, ideas, and talent. Canadian employers want to take advantage of opportunities offered by the fast-moving pool of skilled workers. The global labour force can benefit Canadians through job creation and the transfer of skills. Immigration legislation must be adapted to enhance Canada’s advantage in the global competition for skilled workers...At the same time, global migration pressures and the promise of significant profits from transporting and exploiting migrants have led powerful transnational criminal organizations to extend their activities to migrant smuggling and trafficking...Canadians want to ensure they have the policy and legislative tools to deter migrant trafficking and punish those who engage in this modern form of slavery (CIC 2001a).

In this way, the overview frames the role of Canadian immigration policy with respect to the global capitalist economy in a way that implicitly links the neoliberal optimism of the

global competition for “the best and the brightest” to the dystopics of a global economy haunted by the menacing infiltrative presence of transnational criminal trafficking syndicates.

At the same time, the biopolitics of precarity that defines the distinction between permanent labour immigration and temporary labour migration is also entrenched in the Act. As Sunera Thobani has argued, this distinction is a crucial one for women who are framed as *trafficked*. The impossibility for most women from the South and East to come even close to meeting independent class immigration criteria combined with the precarious status produced by temporary work visas creates the conditions and incentive for women whose mobility is severely constrained to turn to smuggling networks as a means to facilitate their migratory projects (Thobani 2001, 26).

While the Act does expand a few facilitative provisions with respect to family class immigration, most notably by allowing for common-law and same-sex partner sponsorships and reducing sponsorships from 10 to 3 years,<sup>28</sup> the overall thrust of the IRPA is much more focused on “closing the back door” (and some would argue the front door as well) than on opening any doors. The Canadian Council of Refugees describes the Act as generally “hostile to refugees and immigrants,” while the Maytree Foundation argues that the Act “is much more about who cannot come to Canada and how they will be removed, than it is about who we will welcome...” (Community Legal Education Ontario (CLEO) 2001, 2, 12).

The IRPA introduces a new term not employed in previous Acts, “foreign

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<sup>28</sup> The sponsorship provisions were reduced after years of pressure from such women’s groups as the South Asian Women’s Center in Montréal. The expansion of family class partnerships to same-sex and common-law partners have been implemented in the Immigration Regulations rather than the Act itself (making it easier to alter in the future). This expansion speaks to the redefinition of same-sex relationships as “productive” partnerships in this biopolitics of migration, which various queer critics have pointed out comes with its own normalizing costs and forms of regulations (Nadeau 2005; Warner 2000).

national,” to discursively group together all non-citizens including permanent residents. The Act considerably expands the discretionary powers of immigration officers and the grounds for detention, including for administrative purposes (if an officer deems it necessary to complete a hearing) and on the grounds of security and other forms of inadmissibility (CLEO 2001, 12). Cr  peau and Nakache (2006) have shown that the number and duration of detentions have increased significantly since the IRPA came into effect, “because the IRPA and its regulations provide the citizenship and immigration minister with stronger authority to arrest and detain people who pose a security risk and those whose identity is in doubt” (16).

Cr  peau and Nakache cite CIC statistics that demonstrate the sharp rise in detentions in the past five years. “In 2003-04, 13,413 people were detained. This is an increase of 16 percent over the numbers for 2002-03 (11,503), of 40 percent over the numbers for 2001-02 (9,542), of 52 percent over the numbers for 2000-01 (8,786) and of 68 percent over the numbers for 1999-2000 (7,968)” (Cr  peau and Nakache 2006, 16; CBSA 2004; CIC 2003). Moreover, the number of days for which non-citizen migrants were detained increased markedly in 2002-03. Non-citizens spent a total of 165,070 days in detention, the vast majority (99%) not for security reasons, but predominantly upon being deemed a flight risk (56%) or lacking proper identity documents (an additional 10%) (Cr  peau and Nakache 2006, 16).

Given the vast scope of the Act, I will focus on three of the most salient aspects of the IRPA for the purposes at hand. These include the newly developed trafficking provisions, the unimplemented Refugee Appeal Division, and the security provisions (which will be more comprehensively considered in section 3.1.2).

One of the central innovations of the IRPA is its production of human trafficking as a new, criminalized offense,<sup>29</sup> effectively governmentalizing the affective crisis generated through the media event around the Fujianese boat landings outlined in Chapters 2 and 3. It imposes harsh penalties on those found to be smugglers or traffickers, both monetary and carceral (life imprisonment if one is found to be smuggling ten people or more). The IRPA enacts a blanket criminalization of smugglers, defined as those organizing clandestine border crossings for payment, and traffickers, defined as organizing the coming into Canada of one or more persons by means of “threat, force, abduction, fraud, deception or coercion”<sup>30</sup> with aggravating factors that would harshen penalties including whether “bodily harm or death [occurred]; involvement of a criminal organization; whether the offence was committed for profit; and whether the trafficked person was subjected to humiliating or degrading treatment, including sexual exploitation.”<sup>31</sup> The provisions cast a wide net that some argue is being used to target family members, women deemed trafficked, and NGOs aiding undocumented migrants, potentially criminalizing anyone providing assistance in the cross-border movement of undocumented migrants (Thobani 2001, 30; Sharma 2003, 58-59; Cr  peau 2003).

But perhaps the most telling aspect of the *Immigration and Refugee Protection Act*'s trafficking provisions are the practical measures produced through its discourse of protection with respect to trafficked migrants. What forms of protection does the IRPA provide for migrants it deems to be trafficked, and under the guise of whose protection is

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<sup>29</sup> It should be noted that the IRPA adapted elements of its trafficking measures from Article 6 of the United Nations' Palermo *Protocol against the smuggling of migrant* passed in 2000 (see Cr  peau 2003; Sharma 2003).

<sup>30</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. Sec. 117, 118.

<sup>31</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. Sec. 121. The reference to sexual exploitation as an aggravating factor indexes the extent to which feminist campaigns against sex trafficking have played a major role in shaping governmental anti-trafficking legislation on a global scale, with sex trafficking often presented as the paradigmatic form of human trafficking. For more, see Andrijasevic (2004).

the overall policy rhetorically legitimated? Some provisions are made for humanitarian and compassionate considerations to be taken into account in exceptional circumstances to be granted by the Minister on a discretionary basis (Thobani 2001, 30). But beyond such discretionary cases, no concrete provisions are provided for the protection the Act promises to migrants it deems to be trafficked, beyond those for their detention and deportation (Thobani 2001, 31). In other words, the trafficking provisions of the IRPA offer no mechanisms for the protection of trafficked migrants, focusing the entire policy arsenal on the intensification of repressive measures to combat trafficking. Effectively, the biopolitics of “protection” in the *Immigration and Refugee Protection Act* is a protection tantamount to deportation for the vast majority of precarious, undocumented migrants.<sup>32</sup>

François Crépeau has argued that the roots of migrant smuggling lie in repressive border control techniques of states. Similarly, Nandita Sharma emphasizes the links between increasing closure to legalized forms of migration in the North combined with the massive displacement caused by neoliberal capitalism in the South and East as the motivating factors behind migrant smuggling (Sharma 2005, 105). Smuggling has long been a necessary and life-saving strategy for refugees fleeing persecution in contexts of political instability and violence (Nazi Germany in World War II being the classic example). In such a context, anti-trafficking initiatives ultimately serve to criminalize refugees, refugee claimants, and undocumented migrant movements that are themselves the outcome of border control practices and policies (Morrison 2001). Anti-trafficking

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<sup>32</sup> It should be noted that in May of 2006, the federal government announced new emergency protection measures to be extended to migrants deemed to be victims of human trafficking. These include the offer of temporary resident permits (TRPs) for up to 120 days to those considered to be victims of human trafficking. While this represents a clear improvement over mandatory detention and deportation, CIC's announcement of the new measures is telling in its emphasis on determining the authenticity of trafficking victims (which seems to parallel the authentic/bogus refugee distinction): “the new measures have been carefully designed so that only bona fide victims of human trafficking will benefit from them.” Citizenship and Immigration Canada. 2006b. *News Release: Assistance for Victims of Human Trafficking*. May 11, 2006.

policies thereby are coming to serve a key role in the regulation of and closure to precarious forms of migration deemed undesirable (unskilled, impoverished) by states such as Canada.

Another key area that demonstrates the extent to which the governmentalization of the IRPA has been motivated by the push to close the door on refugees and migrants (to the point of violating the letter of its own policies) is the provision creating a Refugee Appeal Division (RAD). The RAD provision was added to the IRPA due to political pressure from refugee advocate organizations such as the Canada Council for Refugees, as part of a compromise to balance out the IRPA's reduction of the number of IRB (Immigration and Refugee Board) members deciding refugee claims from a two member panel to a sole board member. The RAD was proposed as a means to provide some mechanism for recourse to the inevitable errors or arbitrariness that result from a single-person panel that has such massive discretionary sovereign power over the fate of life or death claims.<sup>33</sup> With the implementation of the IRPA in 2002, the government went ahead to reduce the claims hearings to a single-member panel, but never enacted its own policy to create the RAD. It has yet to be implemented to this day.<sup>34</sup>

Why would the government choose to create a situation in which its implementation of refugee policy operates in a state of exception from its own laws? Why is that when it comes to refugees, such procedural states of exception are able to stand,

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<sup>33</sup> Even so, many refugee advocates felt that the RAD would not go far enough in offering a meaningful appeal to refused refugee claimants, because it would not offer an actual hearing but only review the record of the previous hearing. Other, less governmentally oriented and more autonomous refugee and non-status support groups such as No One Is Illegal and Solidarity Across Borders in Montréal have criticized the over-emphasis on the implementation of the RAD by NGOs such as the CCR. They have argued that limiting their political pressure to the implementation of the RAD without questioning the larger legitimacy of the exclusionary measures introduced in the IRPA could lead to a situation in which the government enacts the Appeal division in order to appease critics and legitimize the system as a fair one that needs no further changes.

<sup>34</sup> In 2006, the Bloc Québécois introduced a Private Member's Bill calling for the implementation of the RAD. At the time of writing, Bill C-280 had passed its third reading in the House of Commons.



whereas matters of much lesser gravity, from traffic tickets to minor criminal offenses, allow for an appeal process? The current situation is one in which board members are accorded an exceptional form of sovereign power over life and death, where a single person can decide a claimant's fate with no meaningful possibility of appeal.<sup>35</sup> Until recently, IRB appointments were largely patronage appointments in which qualifications in refugee matters were only considered relevant in some cases. This has allowed a great deal of arbitrariness, ignorance around refugee issues, outright racism, and sometimes open abuses to play a role in these decisions (Showler 2006, 97-106).

The lack of implementation of the RAD also speaks to the power of the mediated political furor generated around the broken immigration system since 2001, amplified by right wing media and political commentators who dramatize their outrage at a system deemed to be out of control with too many avenues of appeal (which I will consider further in Chapter 7.1). The lack of recourse for refused refugee claimants since the implementation of the IRPA has contributed to a heightened increase in church sanctuary cases, in which desperate claimants take sanctuary in church communities that attempt to offer counterspaces of exception from the repressive measures of the state (detention, deportation).

The IRPA also introduces broader grounds for inadmissibility in a number of areas in addition to the new offense of trafficking, itself an expansion of the category for "organized criminality." These expanded grounds for inadmissibility include matters of security, criminality, matters involving violations of human or international rights, and

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<sup>35</sup> The only routes of recourse refused refugee claimants have is to file an administrative appeal with the Federal Court—which does not look at the merits of the case but only procedural matters—or apply for a special Humanitarian and Compassionate consideration. With the advent of the IRPA, church sanctuary has become an increasingly utilized last resort for desperate claimants facing deportation, as the rapid increase in sanctuary cases since 2001 attests.

medical grounds. The larger securitized discourse of threats to the population has resulted in the expansion of grounds for medical inadmissibility of refugees, prohibiting claimants whose medical conditions are deemed to present a potential “danger to public health and safety.”<sup>36</sup> A new category of inadmissibility has been added for “misrepresentation,” whereby a refugee claimant can be retroactively rejected for having made direct or indirect misrepresentations of the facts of their case. Their claim can then be vacated by the IRB.<sup>37</sup> The IRPA also imposes automatic ineligibility on refugee claimants found guilty of serious criminality in Canada, whereas previously such a prohibition was issued only in cases where the Immigration Minister specifically issued a so-called “danger opinion” (Fleury 2004).

As I will examine in further detail (section 3.1.2), through changes in the security inadmissibility and security certificate provisions, the IRPA effectively constructs immigration as a security risk. Against the claims of open and closed doors, the continual linking of immigration and security leads to an almost exclusive emphasis on excluding undesirables.

### **3.1.1 The Creation of the Canadian Border Services Agency**

On December 12, 2003, the two-year anniversary of the signing of the Canada-US Smart Border Agreement and the first day of the Liberal party’s new mandate, Paul Martin took advantage of his first day in office as the new Prime Minister to announce the creation of the Canadian Border Services Agency (CBSA) to be housed in the newly created Department of Public Safety and Emergency Preparedness Canada (PSEPC).

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<sup>36</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. Sec. 38 (1).

<sup>37</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. Sec. 40 (1).

The new agency was created by splitting off and absorbing the interdiction, enforcement, and intelligence functions of Citizenship and Immigration Canada, while the facilitative functions of immigrant selection remaining with CIC. In addition to acting as the enforcement branch formerly housed within the CIC, the CBSA also regroups the Customs program (formerly with the Canadian Customs and Revenue Agency) and passenger and import inspection (formerly with the Canadian Food Inspection Agency) under its umbrella. In many ways, the reorganization and splitting of CIC into two departments, one serving the “enforcement” functions that are now framed as a matter of public safety and “preparedness,” mirrors the United States’ post-9/11 reorganization of the INS (Immigration and Naturalization Service) under the newly created Department of Homeland Security. The PSEPC was created by grouping together five agencies that are now seen as focal points of national security: the CBSA, the RCMP, CSIS, Correctional Services Canada, and the National Parole Board. The new agency and its location within the new department materializes the governmental take-up of the intensified post-9/11 association and equation of immigration, criminality, and security matters.

Ironically enough, this abrupt disassociation of the governmental functions of immigrant selection and exclusion—functions that had been housed in the same department and seen as part of a common project for decades—was presented as an opportunity to return to a celebratory vision of Canada as a welcoming immigrant-receiving nation within the post-9/11 security climate of backlash against threatening migrant bodies. When confronted with political pressure and questions regarding the inevitable bureaucratic chaos resulting from the reorganization of the departments, then Immigration Minister Judy Sgro responded in February of 2004 that her portfolio should

no longer be targeted by fellow MPs or activists asking her to intervene on humanitarian grounds to prevent a deportation. What is interesting is how she framed her governmental deferral of responsibility in terms of a return to the celebratory roots animating Canadian immigration.<sup>38</sup> According to Sgro,

Part of the rationale with separating the immigration and the deportation aspects is that we should be able to celebrate immigration. We should be able to talk about the benefits of immigration, and having immigration and deportation together were clearly obstacles to each other.<sup>39</sup>

This rather unconvincing attempt to argue that the inherently linked nature of immigrant selection and exclusion (who gets chosen and who does not are inextricable) is notable in the ways that it frames deportation as an obstacle, a *downer* one might say, to the cheerful, celebratory imperative that is meant to drive the Canadian project of immigration. Banishing the less cheerful matter of deportation, both governmentally and rhetorically, to matters of security, this peculiar attempt to sever it from any association with immigration speaks to the extent to which Canadian governmental authorities remain invested in maintaining a benevolent image of Canada as an immigrant-receiving nation at the same time that they have massively heightened its repressive apparatus in the post-9/11 era of biopolitical security.

### 3.1.2 Security Certificates

As we have seen, even prior to September 11<sup>th</sup>, 2001, immigration policy was becoming closely articulated to discourses of security and terrorism (Bigo 2002). While the increasingly tight articulation of immigration with matters of security has a long history

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<sup>38</sup> For more on the celebratory imperative that often underpins governmental narratives of Canadian immigration, see Vukov 2003b.

<sup>39</sup> Elizabeth Thompson. "Immigration minister has little power to intervene." *The Gazette* (Montréal, QC). February 23, 2004.

predating 9/11, the security provisions of the IRPA are one of the most powerful sites of governmentalization of the post-9/11 security mania and its targeting of migrant bodies. Framing immigration as an implicit security concern, the IRPA articulates a whole new set of categories of “undesirable immigrants” through the very broad and undefined category of terrorism. The affects of insecurity that were circulated into overdrive through the media event around 9/11 fuelled the governmentalization of an intensified biopolitics of security in some of its most repressive and exceptional forms in recent history. The emergence of these new forms of biopolitical regulation serves to systematize a racialized logic of preemptive security. Yet the governmental practices of exception that have emerged are subjecting racialized migrant bodies to increasingly bold and overt forms of necropower, such as deportation and rendition to torture.

Two key areas where this governmentality of in/security was implemented in the IRPA are the security certificate provisions (which existed prior to the IRPA but took on an intensified form and new targets based on the political climate around 9/11) and the significant expansion of the security inadmissibility criteria that incorporate many of the exceptional procedures of the security certificate process into the front end of the refugee screening process. These security provisions operate through a logic of exceptionality, drawing a dividing line between those whose lives are to be secured and those who are deemed threats to the population and consequently subject to exceptional measures. This juridical state of exception operates on a number of fronts; most notably, the basic and fundamental legal distinction drawn between citizens and non-citizens, and the differential legal standards afforded each with respect to due process. It also operates through the exceptionality of the legal definition of “terrorism,” along with the penalties imposed on suspected “terrorists” through detention and deportation measures (including

“extraordinary rendition”). Finally, this legal exceptionality is further materialized through the resultant targeting of *potential* acts by bodies profiled as “risky” based on a preemptive rationale.

The IRPA draws an even stronger distinction between citizens and non-citizens than the previous Act. It introduces the discursive category of the “foreign national” to regroup all non-citizens, including permanent residents, under the same status. In this way, the Act reorganizes permanent residents as increasingly subject to the states of exception that apply to non-citizens, particularly with respect to security measures. This fundamentally biopolitical distinction formalizes the dividing line between those who are subject to Canada’s liberal democratic rights regime (such as the Constitution, the Canadian Charter of Rights and Freedoms, health and social programs),<sup>40</sup> and non-citizens subject to an altogether different rights regime in which the state of exception is the governing rule. Irina Ceric (2006) characterizes this differential rights regime as the “contingent Charter” (referring to the contingency of the Charter of Rights and Freedoms on citizenship status). The biopolitics of status that this entrenches and the contingency of rights that result are a key site of contestation by social movements of and in support of non-status peoples.

Essentially, the security certificate process is a governmental mechanism for subjecting non-citizens deemed to be security threats to an expedited procedure for detention and deportation without due process (see Appendix 2 for further background on security certificates). The process involves secret (*in camera*) hearings without the

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<sup>40</sup> Of course, this does not mean that, in practice, those to whom citizenship status is extended have equal access to its formal guarantees. These remain differentially accessible depending on status (aboriginal peoples, family class immigrants still subject to sponsorship provisions, etc.) and such social markers as class, ethnicity/race, gender, language, etc.

presence of the accused individual or their lawyer; no adversarial process to test evidence; the immediate, indefinite detention of the accused individual for the duration of the process (which can take several years);<sup>41</sup> the use of secret evidence; no disclosure of precise charges; and relaxed, differential evidentiary standards (Ceric 2006, 1-2). No right of appeal is permitted, only a review by a Federal Court Judge for a determination of “reasonableness.” The IRPA also removed the jurisdiction of the Security Intelligence Review Committee (SIRC) over security certificate cases launched against permanent residents. As has been the case with other categories of non-citizens, jurisdiction over these cases has been turned over to the Federal Court of Canada (Ceric 2006, 10-11; Aiken 2001, 65).

Under sections 86-87 of the Act, the IRPA has also expanded the grounds for security inadmissibility in such a way that refugee claimants can be subjected to the exceptional rules of procedure and evidence that govern security certificates at the front-end of the admission process. This effectively extends the security certificate process to security inadmissibility cases without the need for issuance of a security certificate. This allows government officials to circumvent the higher visibility security certificate process while implementing the same measures for refugee claimants.

Given that security concerns have been foregrounded and central to every *Immigration Act* in Canada since the first Act passed in 1869, it is important to note here the persistent yet shifting nature of the biopolitical problematization of security as an immigration issue in recent years, particularly with respect to who has been targeted and how. As Sharryn Aiken (2001) has shown, while the early years of Canadian immigration

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<sup>41</sup> The exception being permanent residents, who are not automatically detained, though most have been. As of 2006, two of the security certificate detainees, Adil Charkaoui and Mohamed Harkat, were given interim releases under severe bail conditions (Ceric 2006, 2).

security measures targeted any wave of migration that threatened the norms of Anglo-conformity upheld in the policy of the day, the post-World War II era saw a shift to a more bipolar conception of security threats along an East-West divide, in which the Red Scare and fear of Communist infiltration resulted in the targeting of leftists, eastern Europeans, and those originating from socialist countries.<sup>42</sup> In the post-Berlin wall era after 1989, there was another shift from a bipolar to a multipolar conception of security threats, that channeled the increasing fear of “illegal” migration from the South by targeting members of national liberation and political groups from Southern countries (such as the LTTE in Sri Lanka, for instance). As discussed in Chapter 5, Bill C-86 introduced in 1992 widened the security measures in the *Immigration Act* to encompass extremely broad criteria that included “membership of an organization that there are reasonable grounds to believe will...engage in terrorism” (Aiken 2001, 63). This opened the door to broad criteria (“*reasonable* grounds to believe”) based on potentials (“will engage in terrorism”) and association (“membership of an organization”).

Since September 11, 2001, the shift to an intensified national security agenda has made even very circumstantial or tangential association with individuals considered to be members of groups deemed as terrorist in Muslim, Middle Eastern, South and West Asian communities grounds for targeting by the bolstered security apparatus. Five men have been detained or placed under house arrest in Canada under security certificates in recent years, all of them Muslim, and originating from Middle Eastern or North African

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<sup>42</sup> The flipside of this targeting being the welcoming and privileging of dissidents from said communist countries through Canadian refugee policy, such as the Hungarian exodus in the 1950s and the Czech exodus after the Prague Spring in 1967 (see Whitaker 1987).



countries.<sup>43</sup> Mohamed Mahjoub and Mahmoud Jaballah were arrested in 2000 and 2001 respectively (Jaballah having been first arrested on a security certificate in 1999 that was overturned), and have both spent over five years in indefinite detention. The other three, Hassan Almrei, Mohamed Harkat, and Adil Charkaoui, were all arrested after 9/11 and accused of being sleeper agents for al-Qaeda. They have become known among social movement activists as the “Secret Trial Five.” It is worth noting that the arrests of several of the post-9/11 security certificate detainees became highly publicized media events in a post-9/11 climate focused on “rooting out” local terrorists, and that this process of mediatization contributed to the traumatic impacts that the detainees and their families have faced, as I will consider further in Chapter 7.

Another area in which a politics of exception is enacted through the immigration security provisions concerns the exceptionality of “terrorism” as a legal term. Unlike analogous terms in the *Immigration Act* and governmental policy that require precise definition and statutory criteria, the legal definition of the term “terrorism” as well as other key terms of immigration security policy (such as “membership in a terrorist organization” and “dangers to the security of Canada”) have been highly contested and remain undefined.<sup>44</sup> Various levels of the United Nations have attempted for years to define the terms, and have been unable to reach a consensus (Aiken 2001, 56-58). In the landmark case *Suresh v. Canada* involving the deportation of a Tamil refugee based on

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<sup>43</sup> Two other security certificates were carried out in this time period against men who were deported, including an alleged Russian spy in the November of 2006 and right wing Holocaust denier and neo-fascist Ernst Zundel in 2005.

<sup>44</sup> In addition to its definition in the CSIS Act, the term “terrorist activity” is now defined through the *Anti-Terrorism Act* of 2001 (Ceric 4). “Terrorism” and “danger to the security of Canada” remain undefined in the IRPA. However, critics maintain that the definition of terrorism in the ATA is extremely broad and imprecise, including such provisions as “facilitating terrorist activity” and requiring that the act be committed “in whole or in part for a political, religious or ideological purpose, objective or cause.” In October of 2006 the Superior Court of Ontario struck down the motivation requirement provision as constituting a violation of the rights to freedom of religion, expression and association (International Commission of Jurists (ICJ) 2007)

alleged membership in the LTTE,<sup>45</sup> one of several constitutional challenges to security certificates based on the vagueness of key legal terms, the Supreme Court held that the absence of a legal definition of the term “danger to the security of Canada” is not unconstitutionally vague.<sup>46</sup> The decision noted that “‘danger to the security of Canada’ is difficult to define...All this suggests a broad and flexible approach to national security...” (Ceric 2006, 4). This absence of a definition and the broadness of security criteria empowers immigration officials (and since 2004, the Minister of Public Safety) with largely unhindered powers of discretion in the application of security provisions—a form of distributed sovereign power that has tremendous implications for non-citizens targeted by security measures (Macklin 2002, 392-393). The governmental refusal to legally define terrorism also points to the extent to which such governmental strategies of exception rely on the affective repertoire of insecurity, fear and suspicion associated with post-9/11 counterterrorism to stand in for vague, undefined legal terminology that is nonetheless understood to function in a transparent, taken-for-granted manner.

Once the governmental mechanisms of the IRPA’s security provisions are set into motion to target individuals suspected of constituting a “security threat,” these “risky” bodies become caught in what many refugee advocates describe as an unbelievable bureaucracy, subject to exceptional procedures without due process and to the sovereign, repressive face of state racism through detention and deportation. Sherene Razack (2007) describes this as a deadly combination of race and bureaucracy. A marked feature of the biopolitics of security at play in immigration security measures are their secretive nature and the denial of due process to bodies targeted as threats in the name of a securitized

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<sup>45</sup> The Liberation Tigers of Tamil Ealam.

<sup>46</sup> *Manickavasagam Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002], SCC 1, [2002] 1 S.C.R. 3.

state sovereignty. Charges against security detainees are never disclosed to them or the public, secret evidence is routinely employed, secretive, security agencies such as CSIS are given wide latitude and range over the entire juridical process without any need for public transparency or accountability. This differential rights regime for non-citizens has been widely criticized by the communities targeted, by social movements of non-status peoples, and by such international bodies as the United Nations Working Group on Arbitrary Detention (United Nations Working Group on Arbitrary Detention 2005).

The arbitrary, automatic, and indefinite nature of the detention that security suspects are subjected to constitutes another dimension of this exceptional, repressive face of state racism. Security certificate detainees have routinely been held under indefinite detention for years at a time, often under exceptionally harsh conditions, and with little opportunity to challenge the conditions of their detention due to extremely limited judicial reviews. Prior to his release under extremely restrictive conditions of house arrest in April of 2007, Mahmoud Jaballah, one of the five current security certificate detainees, had been detained for over five years without charges and only one opportunity for judicial review (*People's Commission on Immigration Security Measures* 2007, 49). Detainees are often subjected to solitary confinement for lengthy periods—Mohamed Harkat faced the first 11 months of detention in solitary confinement (55). In April of 2006, security certificate detainees were transferred to the newly opened Kingston Immigration Holding Centre (KIHC) at the Millhaven Federal Penitentiary, a 3.2 million dollar special facility built for immigration security cases that has been dubbed “Guantanamo North” by critics. In late 2006 and early 2007, the three remaining detainees in the KIHC (Mahjoub, Jaballah, Almrei) undertook extended hunger strikes to protest their detention conditions. Mahjoub’s hunger strike lasted 86 days, while Almrei’s lasted 155 days. Despite

vocal protests, the Canadian government refused to provide the striking detainees medical monitoring.

Another dimension of the biopolitical functions of detention in immigration security cases concerns the diffusion of the detention process beyond the architectural facilities of detention centres in the form of restrictive release conditions that have been imposed on some of the security certificate detainees. Both Adil Charkaoui (in February 2005) and Mohamed Harkat (in May 2006) were granted extremely restrictive release conditions that included the wearing of a GPS tracking bracelet so that CSIS may monitor their movements at all times; curfews; restricted times that they may leave their homes always accompanied by a chaperone (in both cases, primarily women in their family); pre-approval by the CBSA of visitors to their home; prohibition of access to the internet, or text messaging; restrictions on using any computer terminal or phone outside the one in their homes; no movements outside of the cities in which they live. In addition, Harkat agreed to the condition that he refrain from speaking Arabic in public.<sup>47</sup> Such release conditions impose prohibitory measures on movement, contact, and communication that go far beyond the kinds of measures that are imposed on probationary cases for citizens charged and found guilty of criminal acts.

The use of deportation as a security measure against non-citizens was expanded in the IRPA. It is also a factor that significantly heightens the stress and trauma of detention under the security provisions, as the risk of eventual deportations hangs over the heads of detainees. Security certificate detainees such as Mohamed Harkat were reported to experience vivid nightmares and night terrors about facing torture upon their

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<sup>47</sup> Kate Fillion. "Interview with Mohamed Harkat." *Macleans.ca*. March 26, 2007.

deportation, nightmares that began to occur with the onset of their detention (*People's Commission on Immigration Security Measures* 2007, 56).

On February 23, 2007, in an historic constitutional challenge launched by Charkaoui, Harkat, and Almrei, the Supreme Court of Canada struck down the security certificate process laid out in the IRPA as unconstitutional and a violation of the Canadian Charter of Rights and Freedoms.<sup>48</sup> In particular, the Court took issue with the use of secret evidence in determining the “reasonableness” of a security certificate, the lack of due process, and the indefinite nature of the mandatory detention imposed, which violates Section 7 of the Charter guaranteeing life, liberty, and security of the person. While a major victory from the perspective of the detainees and their supporters, the Court’s decision nevertheless upholds the principle of security certificates, suspending the ruling from taking effect for one year and giving the federal government the same amount of time to rewrite and reintroduce security certificate legislation. Maintaining Canada’s biopolitical divide regarding citizenship status, it also upholds many aspects of the differential rights regime that govern non-citizens. For instance, the Court interprets Section 6 of the Canadian Charter of Rights and Freedoms on mobility rights to allow for the differential treatment of citizens and non-citizens in matters of deportation.<sup>49 50</sup>

In the meantime, the five security certificate detainees remain in a legal limbo, with four of them under heavy surveillance and restricted house arrest (Mahjoub,

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<sup>48</sup> *Charkaoui v. Canada (Minister of Citizenship and Immigration)*, [2007] SCC 9. February 23, 2007.

<sup>49</sup> See *Charkaoui v. Canada (Minister of Citizenship and Immigration)*, [2007] SCC 9. February 23, 2007. <http://scc.lexum.umontreal.ca/en/2007/2007scc9/2007scc9.html> (accessed March 2007), para 129.

<sup>50</sup> The Supreme Court decision also hints at one potential solution that has been adopted in the United Kingdom, the use of a so-called special advocate, a government-appointed lawyer who has access to the evidence against a security certificate detainee without sharing this information with the person charged. Charkaoui has been vocal in his opposition to the special advocate proposal as an adequate or effective remedy to the fundamental injustice of the process.

Jaballah, Charkaoui, and Harkat). Almrei continues to be incarcerated at Millhaven.<sup>51</sup> In May of 2007 at the Federal Court of Canada, the Canadian government attempted to argue (unsuccessfully) that it should be allowed to continue deportation efforts against Harkat, despite the Supreme Court ruling.

On the heels of the Supreme Court decision, Charkaoui has called for a public inquiry and for the right to question and cross-examine CSIS with regards to what he described as the “flimsiness of CSIS’s case against me” following a series of revelations regarding the highly questionable nature of evidence obtained by CSIS from several unreliable informants.<sup>52</sup> In particular, in April of 2007, Charkaoui’s call was bolstered by the publication of a letter in the *Journal de Montréal* by a central informant in his case, in which he retracts key evidence he provided against Charkaoui and admits that it was false.<sup>53</sup> The informant had been held in a US prison under a special arrangement whereby his 130-year sentence would be lessened in exchange for information. His name brings us full circle to the first days of the 9/11 news media event: Ahmed Ressam.

A final and most notable feature of the reconfigured post-9/11 biopolitics concerns the increasing resort by the Canadian government to practices that were previously seen to violate the basic principles of human rights treaties to which Canada is a signatory: deportation to torture. The IRPA introduced the Pre-Removal Risk Assessment (PRRA) procedure as a final safeguard that refugee claimants could apply for prior to deportation, a procedure put into place as part of Canada’s commitment to the

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<sup>51</sup> At the time of final revisions and writing of this text (Spring 2007).

<sup>52</sup> Coalition Justice for Adil Charkaoui. “Charkaoui: CSIS Should Be Questioned about Ressam ‘Evidence’.” April 20, 2007 (accessed April 2007). <http://www.adilinfo.org>.

<sup>53</sup> Fabrice De Pierrebourg. “Ressam blanchit Charkaoui.” *Journal de Montréal*. April 20, 2007.

principle of non-refoulement in the United Nations Convention Against Torture.<sup>54</sup>

However, the government can exclude security inadmissible or security certificate cases from the PRRA procedure altogether. In instances where security cases are allowed to apply for protection under the PRRA, the government weighs the risk of torture they may face against the security risk they pose to Canada. In this way, the IRPA opens the door to deportation to torture in its deportation provisions.

In 2002, this process was challenged in the afore-mentioned case of *Suresh v. Canada (Minister of Citizenship and Immigration)*, with the Supreme Court affirming this biopolitical calculus of weighing the threat of torture posed to the applicant against the security threat they pose to the state. The Supreme Court's decision was clearly framed in the language of exceptionality, stating that, "we do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified."<sup>55</sup> This has come to be known as the "Suresh exception."

In July of 2006, Sogi Bachan Singh, a refugee claimant deemed to be security inadmissible, was deported to India after having been denied protection by the Minister of Immigration despite having been found to be at risk of torture under the PRRA. Critics charge that the exceptionality of immigration security cases with respect to the principle of non-refoulement<sup>56</sup> and the resort to deportation to torture is the legalized face

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<sup>54</sup> In practice, the PRRA thus far has a 96-98% refusal rate, meaning it only grants protection to 2-4% of those who apply for protection prior to removal (CIC 2005, 40). With the introduction of the IRPA, the PRRA replaced an earlier procedure that was used under the previous Act, the Post-determination Refugee Claimants in Canada Class (PDRCC).

<sup>55</sup> *Manickavasagam Suresh v. Minister of Citizenship and Immigration and the Attorney General of Canada (Suresh v. Canada)*, [2002], SCC 1, [2002] 1 S.C.R. 3, January 11, 2002. <http://scc.lexum.umontreal.ca/en/2002/2002scc1/2002scc1.html> (accessed January 2007) at para. 78.

<sup>56</sup> Considered a cornerstone of international refugee law, the principal of non-refoulement upholds the notion that refugees should not be returned (*refoulé*) to a country where their lives or freedoms could be threatened, even in situations of generalized risk such as a war zone (which is what distinguishes it from political asylum where the threat of specific, targeted persecution against an individual must be deemed to be well-founded) (Crépeau and Nakache 2006, 7).

of Canada's resort (in coordination with the United States) to the practice of extraordinary rendition as part of the "war on terror."<sup>57</sup> Extraordinary rendition is an extra-judicial procedure that many charge has become a common practice in the United States and Canada as part of the "war on terror", in which both non-citizens and non-Canadian-born citizens who are deemed suspect of terrorist activity are deported or extradited by questionable legal means to states in which interrogation and torture are practiced. Critics charge that this practice serves as a means to circumvent the prohibitions against torture in the sending countries.

The most infamous case of Canada's role in extraordinary rendition concerns that of Syrian-born Canadian citizen Maher Arar, who was detained and tortured by Syrian authorities for a year (2002-2003) after being detained and extradited by US authorities in concert with the Canadian government during a routine flight through the United States. In September 2006, a public inquiry—the Arar Commission headed by Denis O'Connor—exonerated Arar of all terrorism allegations. The Commission criticized the role of the RCMP in handling his case, and found that Canadian authorities had "likely" played an active and key role in his rendition and torture in Syria.<sup>58</sup>

Facing mounting opposition as more details have emerged in the media about the extent of the practice in post-9/11 US policy, its many opponents have argued that the wider practice of extraordinary rendition is tantamount to the subcontracting of torture,

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<sup>57</sup> Coalition Justice for Adil Charkaoui. "ARAR: Never again! Except... : Action report-back and update on 'ordinary rendition' cases in Canada." October 2006 (cited October 2006). [http://www.adilinfo.org/communiques/arar\\_neveragain.htm](http://www.adilinfo.org/communiques/arar_neveragain.htm).

<sup>58</sup> In January of 2007, following several months of negotiation between Arar's representatives and the Canadian government, Prime Minister Stephen Harper issued a public apology to Arar on behalf of the Canadian Government and a settlement of \$10.5 million dollars for his treatment. Despite the Arar Commission's exoneration of Arar and recommendation that Canada protest the US' treatment of him, the US government (which refused to cooperate with the Commission) maintains it was in its legal rights to extradite Arar to Syria and refuses to remove his name from their terrorist watch list.



or “torture by proxy” (Association of the Bar of the City of New York and the NYU Center for Human Rights and Global Justice 2005). Significantly, Canadian critics charge that the Suresh exception, along with the IRPA provisions that clear the way for the deportation to torture of security suspects, constitute governmental forms of “ordinary rendition,” a normalization of these exceptional practices when it comes to immigration security cases.<sup>59</sup>

It is through such practices that the necropolitics that Mbembe (2003) argues is an important counterpoint to the Foucauldian conception of biopolitics surfaces and becomes most manifest. In this securitized necropolitical calculus, the migrant body deemed to be a security risk is weighed against the national body ostensibly threatened by the migrant’s very presence on its soil. In this weighing of the potential risk of torture to the migrant against potential national security risks, the “risky” migrant body comes out on the losing end, openly sacrificed in this racialized calculus of risk and sovereign power.

### **3.2 “Smart” Borders, “Safe” Zones, and the Friendly Face of Interdiction: The Safe Third Country Agreement**

A key pillar of the post-9/11 securitization of immigration policy is the Safe Third Country Agreement (STCA), a bilateral agreement signed between Canada and the United States as part of the Canada-US Smart Border Accord in response to widely circulating anxieties about the porous border. The initial Smart Border Declaration was signed by Deputy Prime Minister John Manley and the newly appointed Director of Homeland Security Tom Ridge in December of 2001, promising that “by working

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<sup>59</sup> Coalition Justice for Adil Charkaoui. 2005. “ARAR: Never again! Except... : Action report-back and update on ‘ordinary rendition’ cases in Canada.” October 2006 (cited October 2006). [http://www.adilinfo.org/communiques/arar\\_neveragain.htm](http://www.adilinfo.org/communiques/arar_neveragain.htm).

together to develop a zone of confidence against terrorist activity, we...[can] build a smart border for the 21<sup>st</sup> century” (Government of Canada 2001b). The degree to which the smart border was legitimized and promoted under the banner of securing this safe “zone of confidence” points to the affective role such policies are made to play in governmental promises of reassurance, confidence, and safety for a public rendered insecure through media-modulated anxieties regarding terrorism. On September 9, 2002, Prime Minister Jean Chrétien and President George Bush signed the Smart Border Action Plan, a 30 point action plan on such matters as biometric identifiers; the new permanent resident card; visa, enforcement and security policy coordination; enhanced joint interdiction measures; and the Safe Third Country Agreement. The final text of the Agreement was signed in December of 2002, and the STCA came into effect on December 29, 2004.

The STCA significantly alters the practices that materialize and effect the Canada-US border with respect to refugee asylum. In designating the United States as a safe third country for refugee claimants (now formally designated as such in the IRPA under s. 101(1)(e)), Canada has sought to construct this securitized continental “zone of confidence” by declaring refugee claimants who arrive at the Canadian border via the United States ineligible for refugee status in Canada. Effectively, the Agreement reciprocally designates each nation as a “safe” zone by the asylum standards of the other, meaning that claimants are forced to make a claim in the first of the two countries to which they arrive by direct travel.<sup>60</sup> The receiving country can return a claimant who

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<sup>60</sup> In other words, claimants who arrive at the Canadian border via the US can now only legitimately make a claim in the US, and those who arrive in the US via Canada must do so with Canada. Certain exceptions apply, for claimants who have family ties in the “third” country; who come from countries that don’t require visas; who come from certain designated countries (such as those that are on the moratorium list for removals in Canada); or who are unaccompanied minors.

hasn't arrived via direct travel to the "country of last presence." The Safe Third Country restrictions only apply to claims made at the border. Inland claims are exempted based on the impossibility of determining with certainty the precise routes of arrival to Canada of inland claimants (Macklin 2003, 2-3).

In the years prior to the implementation of the Agreement, between 1995-2001, 60-70 percent of refugee claims declared at ports of entry (i.e. the border and airports) arrived via the United States (Macklin 2003, 11), and approximately one-third of total claimants passed through the United States (Harvard Law Student Advocates for Human Rights et. al. 2006, 10). In 2001, 14,000 refugee claimants arrived in Canada via the United States, whereas the number of US refugee claimants arriving via Canada was 200 (Macklin 2003, 11). In the first 18 months of implementation of the STCA, refugee claims at the Canadian border fell by over 50 percent (Harvard Law Student Advocates for Human Rights et al. 2006).

This raises the question of what possible motivation security-minded restrictionist US officials would have for accepting an asymmetrical arrangement that clearly leaves the US handling an increased flow of refugee claims that Canada has restricted and shifted onto them, given that many more refugee claimants travel through the US to get to Canada than the other way around. Indeed, the Canadian government has always been the driving force behind the agreement, having tried several times between 1995 and 1997 to negotiate a Safe Third Country agreement, all of which were refused due to US concerns it would escalate the backlog in their own system (Macklin 2003, 2).<sup>61</sup> The events of 9/11 gave the STCA project the governmental momentum it needed. Some

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<sup>61</sup> Alisa Solomon, 2002. "Northern Closure: The U.S.-Canada 'Smart Borders' Accord Sells Refugees Down the River." *The Village Voice*. August 28-September 3, 2002.

have suggested that Canada was able to get the US to agree to the accord this time around in part because key US governmental officials had become thoroughly convinced of a “Canadian connection” to the 9/11 attacks being paraded in the media.<sup>62</sup> Ultimately, the STCA was accepted by the US as a trade-off for “counter-terrorism” measures that it wanted passed in the 30-point Smart Border action plan (Macklin 2003, 4; Harvard Law Student Advocates for Human Rights et al. 2006, 10). Already, the intensified association between refugees and security as a result of the events around 9/11 has meant that refugee policy has become a key target and tool of enhanced security measures. With the Smart Border Accord, it has also become a commensurate item for trade, an item of currency and tit for tat in the transnational traffic of policies and intelligence information that are a key feature of the emerging multilateral regime of global security.

It should be noted that the governmental model of the Safe Third Country approach to refugee interdiction was pioneered in the multilateral Safe Third Country agreements implemented by the European Union in the 1990s<sup>63</sup> long before the adoption of the Canada-US Safe Third Country Agreement. In the European Union, refugee activists and advocates call the intensification of this process “asylum outsourcing” and the externalization of asylum (Rodier 2006), in which the border management and asylum policies of the EU are increasingly being subcontracted to external buffer countries that implement interdiction (and other) policies on behalf of the EU so as to

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<sup>62</sup> Audrey Macklin. 2002. Presentation. *Article 13: Open Borders and Refugee Concerns* (Colloque). Université du Québec à Montréal (Montréal, Québec). May 2002.

<sup>63</sup> The first Safe Third Country clause in the European context was introduced in Germany’s asylum law restrictions of 1993. It declared all countries bordering Germany to be safe third countries, and primarily targeted the influx of displaced Balkan refugees fleeing the wars in the former Yugoslavia. Other European countries soon followed suit. It has become a central policy mechanism of the emerging migration regime of the European Union.

prevent migrants from ever setting foot in an EU destination country (Blanchard 2006). Following the model of the “Pacific Solution” to the media event around the Tampa Crisis in Australia in 2002,<sup>64</sup> Tony Blair proposed the “external processing” of refugee claimants through the introduction of “transit processing centers” in “regional protection areas” outside the borders of the European Union—a project which has been since embraced by several EU countries and is in its pilot phase.

All of these precedents have impacted the reconfiguration of the Canada-US border as “smart border.” Apart from the obvious rhetorical appeal to new technologies and security measures as inherent solutions to the problematization of the porous border by the 9/11 media event, what is it that a “smart” border is supposed to do? Firstly, as stated in the Canada-United States Accord on our Shared Border:

The United States and Canada’s long-term goal is to arrive at a vision of the shared border that...further develops the facilitative character of the border while addressing concerns about the movement of illegal migrants [and terrorists] to North America...The two countries are working together...us[ing] advanced technologies at airports and land borders to facilitate the movement of genuine travelers and to control the movement of illegal migrants” (CIC 2000b, 32).

While this citation comes from a border accord that predates 9/11, interestingly enough, it is significant in the way it appeals to technological and control measures to configure a “smart” border with distinct functions *à plusieurs vitesses*: a facilitative function to expedite the processing of “genuine” and business class travelers, and a restrictive control function that targets illegalized migrants and/or security threats. Such a vision implicitly draws on a framework of profiling and risk assessment, in which bodies on the move are assessed

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<sup>64</sup> The so-called Pacific Solution was introduced by the Howard government in response to the media spectacle around the attempted boat landing of the Tampa freighter carrying predominantly Afghan refugee claimants (intercepted by the Australian military). As an outcome of the uproar around the Tampa, Australia concluded agreements in which they began paying neighboring Papua New Guinea and Nauru to host Australian detention centres run by a subsidiary of the private prison corporation Wackenhut, thereby preventing refugee claimants from ever setting foot on Australian territory.

and profiled according to the potential level of risk attached to them, and are treated to the differential faces of the *smart* border (on a continuum from facilitative to repressive) accordingly.

Secondly, the “smart” border of the STCA takes on specific, differential functions with respect to refugee claimants. The interdiction functions it performs based on its contiguousness with a neighboring third country deemed “safe” is a preventative one, intended to deter potential practices of “asylum shopping” and to facilitate so-called “burden sharing” between the countries party to the agreement. These latter two terms—frequently employed in policy discourses and by politicians with reference to safe third country agreements (in Europe as well as North America)—are notable in the way that they figure refugees along the lines of inauthenticity (the “bogus refugee”) and encumbrance (as burdens). Indeed, the “principle of burden-sharing” is explicitly referred to in the preamble to the STCA. As John Manley put it in announcing the talks leading up to the STCA in June of 2002, “It’s not a matter of shopping for the country that you want, it’s a matter of escaping the oppression that you face” (Macklin 2003, 6).<sup>65</sup> The spectre of “asylum shopping” becomes the means through which the larger figure of the bogus refugee abusing and manipulating asylum (by shopping around for the host country that best suits her) is manifested in safe third country interdiction policies.

Such an approach to the smart border subjects refugees to a governance in which their authenticity is measured by the extent to which all manifestations of choice and agency are evacuated; any trace of choice, options, or agency with respect to a claimant’s prospective conditions of life may be grounds for suspicion of their authenticity

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<sup>65</sup> Alisa Solomon. 2002. “Northern Closure: The U.S.-Canada ‘Smart Borders’ Accord Sells Refugees Down the River.” *The Village Voice*. August 28-September 3, 2002.

(tantamount to “shopping”). For those who are even able to access it (given that the impetus behind the STCA is precisely to deter access), this evacuation of agency follows the claimant throughout the refugee determination process, structured as it is by the inherent optic of suspicion that governs the process. One refugee lawyer I interviewed emphasized the contradictions of a refugee process that proclaims itself to be non-adversarial, underlining how the optic of suspicion created via the figure of the bogus refugee comes to govern the entire refugee claims process:

In my experience, it is absolutely an adversarial, inhumane process. Technically it's supposed to be non-adversarial. The RCO [Refugee Claim Officer] is not supposed to be an adversary; the RCO is supposed to be the Minister's Representative to bring out whatever is missing. Often what the RCO becomes is like this trapping force, who says, “oh well, you said this, and you're saying this now, so what are you trying to say?” Often very much coming from a place of “you're probably lying and I'm going to make sure we find that out”...Often the Board Members are coming from that stance too. [In one of my cases], they were questioning this 59 year-old woman who was bawling, like she was some kind of escaped criminal. And so there's this whole atmosphere around this myth of refugees being liars—and that gets perpetrated in the hearing process. Because it's not an innocent until you are proven guilty, it's guilty until you are proven innocent; “you're lying unless you prove us different.” And the threshold—even though in refugee law it's a mere possibility that the person will face persecution—it becomes this huge threshold of “is this person telling the truth?” And we're going to find out in this constructed four-hour hearing period where they're totally terrified and we're acting like aggressive assholes, and then we're going to make a decision based on that.<sup>66</sup>

This statement vividly captures how suspicion becomes an affective stance that intimately governs and impacts refugee claims hearings and the larger refugee determination process. Discursively structured as a policy to prevent “asylum shopping” via the configuration of a smart border, the STCA further amplifies the optic of suspicion that governs the larger refugee determination process at land ports of entry in order to close

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<sup>66</sup> Interview with Refugee Lawyer, March 2001. Toronto, ON.

down access to the process itself, equating transit through the United States with asylum shopping and inauthenticity.

Finally, the smart border is a border that increasingly relies on interdiction measures, both at ports of entry (through the STCA) and extraterritorially, to perform its control functions via the monitoring and policing of potential migrant movements far beyond its physical markers. In the process, the smart border conscripts everyone from transportation carriers to intelligence agencies, “migration integrity officers” to everyday citizens into a diffusion of the control functions of its governmentality. Everyone is called upon in some form to play the role of quasi-immigration officials monitoring legitimized movements. In such an affective climate, the appearance of such vigilante groups as the Minute Men who patrol and monitor both the Canada-US and the Mexico-US borders for “illegal” migrants entering the United States indicate less an aberrant or excessive response of extremists, and more a consistent extension and diffusion of the current governmental formation of the smart border. Furthermore, the extraterritorial interdiction measures of the smart border extensively expand the control functions of the physical border into a mobile, virtualized border of potentially global reach.

The STCA is a central piece in a whole arsenal of interdiction policies that have been introduced as a key post-9/11 security strategy targeting migration as part of the “war on terror.” These interdiction policies span intensive and extensive measures, ranging from internal measures, such as security detentions and surveillance; measures enacted at the border (of which the STCA is a major piece); to extraterritorial measures, which include everything from the imposition of visa regimes on refugee-producing countries, to transportation carrier sanctions (Macklin 2002, 385). In particular, since 1999 (the year of the Fujianese boat landings), Canada has deployed 45 so-called



“migration integrity officers” (MIOs) in 39 overseas locations to intercept undocumented migrants before they ever reach Canada (Brouwer 2003; Crépeau and Nakache 2006, 13).<sup>67</sup> Crépeau and Nakache note that, “according to DFAIT [Department of Foreign Affairs and International Trade], of all attempted irregular entries by air, 72 percent (over 6,000 individuals) were stopped before they reached Canada. Since 1999, more than 40,000 people have been intercepted by the MIO network before they boarded planes for North America” (Crépeau and Nakache 2006, 13). The virtualized operation of such policies of interdiction and regulation of legitimized mobility continue to escalate in the post-9/11 biopolitics of security, through increasing bilateral and transnational collaborations around interdiction policies and strategies (visas, travel routes, readmission agreements) for limiting and regulating movement across transnational spaces.

The ensemble of interdiction measures entrenched with the smart border regime suggest that, while the North American security perimeter project has not practically-speaking come to pass, key governmental parameters of the security perimeter have been put into place through an arsenal of post-9/11 interdiction measures (including the STCA). In this diffusion of the physical border to create a continental “zone of confidence,” the smart border becomes implicitly and explicitly defined through an enhanced monitoring and governance of, as well as a clampdown on refugee movements.

What have been the effects of the reconfigured borders constructed through the STCA?<sup>68</sup> The day prior to the implementation of the agreement, December 23, 2003,

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<sup>67</sup> Then Immigration Minister Denis Coderre proudly touted Canada’s interdiction program in a speech to the Canadian Bar Association in 2003: “In the past six years, our migration integrity specialists have stopped more than 40,000 people with improper documents before they boarded planes for North America” (Brouwer 2003).

<sup>68</sup> It should be noted that the effects and impacts of the STCA have been difficult and challenging to monitor, in part because there is no schedule set out in the Agreement itself for regular ongoing reviews. For a fuller outline of the impacts than can be dealt with here, the two most comprehensive monitoring

saw a crisis play out at the Canada-US border as refugee claimants rushed the border to file claims that would qualify them under the pre-STCA rules. A makeshift camp had to be set up in immigration buildings at the border, along with a fleet of school buses to house the claimants in sub-zero temperatures.<sup>69</sup> Among the most blatant impacts predicted by refugee advocates and Latin American communities alike is that the Safe Third Country agreement disqualifies any form of land travel to Canada for Latin American refugee claimants (very few of whom are able to arrive by other means), effectively closing the Canadian border to their legitimate entry. In the year that the Safe Third Country Agreement was implemented, Colombian refugee claims that had accounted for the largest number of refugee claims in 2004 dropped by 70% within six months.<sup>70</sup> Many refugee claimants refused entry to Canada end up detained in US prisons due to increasingly automatic detention policies espoused by the US government (Harvard Law Student Advocates for Human Rights et al. 2006, 12; Macklin 2003, 14).<sup>71</sup>

Given that Canada and the United States have differential standards in treating refugee claims, particularly in such areas as gender, sexual orientation, nationality, and documentation, the effects of the STCA in closing off access to the refugee determination process for US-transiting claimants also has particularly gendered and sexualized impacts

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reports that have been released thus far include *Closing the Front Door: Report on the STCA 6 months after implementation* by the Canadian Council for Refugees (2005), and *Bordering on Failure* (Harvard Law Student Advocates for Human Rights et al. 2006).

<sup>69</sup> This despite the fact that refugee advocates and NGOs had warned that the implementation of the agreement on such short notice (announced only a month prior, though the agreement had been signed two years earlier), and in the middle of winter, was likely to spark just such a crisis (Canadian Council of Refugees 2005, 16).

<sup>70</sup> Janet Dench and Rick Goldman. "Canada Not Meeting its Obligation Toward Refugees: Safe Third Country Agreement with U.S. Allows Canada to Turn Away Genuine Refugees." *The Gazette* (Montréal, QC). August 10, 2005. <http://www.web.net/~ccr/op-ed10aug.html> (accessed June 28, 2006).

<sup>71</sup> As Audrey Macklin shows, the 9/11 attacks have provided a pretext for the automatic detention of Haitian asylum seekers in the United States, as well as all asylum claimants from countries where "al-Qaeda, al-Qaeda sympathizers, and other terrorist groups have operated" for the length of a claims process that often takes several months to several years. The latter measure was announced as a new policy by Director of the Department of Homeland Security Tom Ridge in March of 2003 (Macklin 2003, 14).

(Dauvergne et al. 2006). Canadian refugee policy was modified in the 1990s to expand the criteria for persecution based on “membership in a social group” to include gender and sexual orientation-based refugee claims for the first time. This extended eligibility for refugee protection to women fleeing domestic violence as well as, in certain cases, to sexual minorities fleeing persecution targeting their sexuality. Such claims have been contested and inconsistently recognized in the United States, and have yet to be decisively settled. Despite the fact that the text of the IRPA calls for principles of equality and anti-discrimination to be adhered to with respect to the application of immigration policy, the Canadian government has openly acknowledged that the STCA will have differential impacts by gender (CCR 2005, 8).

The aforementioned US policies regarding the automatic detention of asylum seekers of many nationalities, as well as US treatment of undocumented claimants, in general, is another area in which Canadian and US refugee policies differ significantly. The arsenal of post-9/11 US security measures that target immigration status have led many to question the extent to which the United States can be said to be a “safe” third country for many migrants at all. These include the “preventative detention” of more than 1,200 migrants of Arab or Muslim descent in the immediate aftermath of September 11<sup>th</sup> (many of whose status as non-citizens was used to detain them indefinitely), as well as the NSEERS<sup>72</sup> special registration program introduced in August of 2002, which required men and boys over the age of 16 from 25 “special interest” (predominantly Muslim and Arab) countries to register with immigration authorities, provide biometric identification (fingerprints), and interviews. Over 2,000 of these men were detained, while failure to register for the NSEERS program was made into a deportable offense.

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<sup>72</sup> The National Security Entry-Exit Registration System.

Upon its implementation, the Special Registration program prompted a fearful exodus<sup>73</sup> of Muslim and Arab migrants seeking entry to Canada (prior to the STCA) because they no longer felt safe in the United States (Macklin 2003, 9-10).<sup>74 75</sup>

Each of these instances of differential policies between the United States and Canada raises questions about how the promises of a “safe zone of confidence” constructed through the STCA seeks to gloss over and level significant differences between the two countries’ policies. Such a “safe zone” holds out the prospect of an indirect yet effective “harmonization to the bottom,” producing a leveling effect on the two countries’ policies in favor of the most repressive. This has been the effect of the safe third country accords in the European Union, which have resulted in a race to the bottom among countries to implement the most repressive and restrictionist immigration policies in order to avoid creating a chain of redirected migration flows in which their country becomes the “weak link” or “magnet.”

Interestingly though paradoxically, some policy-makers and government officials have actually acknowledged that these differentials in Canadian versus American immigration policies would create the conditions and incentive for a sharp rise in the number of illegalized entries across the border into Canada. At public hearings on the Smart Border Accord held in Washington prior to the implementation of the STCA (in August of 2002), a US government official with the INS asylum division, Joseph Langlois,

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<sup>73</sup> Michael Powell. “An Exodus Grows in Brooklyn.” *The Washington Post*. May 29, 2003.

<sup>74</sup> In the first five weeks after NSEERS came into effect for nationals of seven countries (including Pakistan) in February of 2002, over 3,000 Pakistanis alone sought entry to Canada, while 1,100 were deported. According to estimates by a Karachi-based magazine, over 50,000 Pakistanis were expected to voluntarily leave the United States. Traci Hukill. 2003. “A Safe Haven Turns Hostile.” *AlterNet*. March 27, 2003. <http://www.alternet.org/story/15480/> (accessed September 2006).

<sup>75</sup> For a detailed account of the experiences of NSEERS special registrants fleeing the United States and seeking entry to Canada, see “In Search of Asylum: Canada,” Chapter 6 of *We Are All Suspects Now: Untold Stories from Immigrant Communities after 9/11* by Tram Nguyen (Nguyen 2005).

openly acknowledged that the STCA would only have a deterrent effect on some of the migrants who would seek to enter Canada, while the rest “will enter Canada illegally.”<sup>76</sup> Aside from the policy differentials, the mere fact that the STCA is only applied at land ports of entry along the border and not to inland claims encourages refugee claimants who have no choice but to arrive via the United States to seek irregular and clandestine routes of entry. Furthermore, many refugee claimants barred from Canada by the STCA are likely to remain in the United States without status, rather than file a refugee claim that would expose them to the risk of detention and an arbitrary process (CCR 2005, 4, Harvard Law Student Advocates for Human Rights et al. 2006, 21). The most comprehensive study to date on the impacts of the STCA has confirmed predictions of a significant rise in the number of illegalized border crossings by refugee claimants (Harvard Law Student Advocates for Human Rights et al. 2006, 22). It would seem that the ironies of a policy introduced to create a “secure zone of confidence” and enforce more stringent regulation of migrant movements that instead encourages growth in the underground population of undocumented migrants is not altogether unintended or unforeseen. In this way, the post-9/11 governmental project touted as securing a smart border encourages the porousness of that same border by promoting illegalized border crossings and creating a larger pool of precarious migrants forced underground.

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<sup>76</sup> Alisa Solomon. 2002. “Northern Closure: The U.S.-Canada ‘Smart Borders’ Accord Sells Refugees Down the River.” *The Village Voice*. August 28-September 3, 2002.

#### **4 ... the media non-event: the phantom terrorist body as affective fact...**

Refugee, terror links 'conjecture.' - *Toronto Star*. December 3, 2001.

Despite the sweeping scale and pace of immigration policy shifts put into place in the name of post-9/11 security and protection of the population outlined throughout this chapter, it was eventually and very quietly noted to little media fanfare that there was no Canadian connection to the September 11<sup>th</sup> attacks in the United States. The news media's attack on Canadian immigration policy as the source of insecurity in the United States was entirely unfounded, as the attacks had nothing to do with Canadian immigration and refugee policy. Audrey Macklin has argued that any failures that might be inferred from the Ressam and al-Marabh cases that became the nodal point of the Canadian connection story do not lie with refugee policy or the refugee determination system, as both men had in fact been rejected for refugee status. In the case of Ressam, while there had been a suspension of deportations to Algeria due to increasingly high levels of violence and instability in that country, the inferred "failure" largely lay with Canadian intelligence organizations that chose to allow Ressam to stay in the country for surveillance purposes<sup>77</sup> (Macklin 2002, 388-389). The extent of the amplification that the disproportionate post-9/11 media focus on Canada's ostensibly leaky refugee system produced is particularly striking when we consider the fact that refugees make up only 0.1% of annual migration flows into Canada (CCR 2001b). A Canadian connection to 9/11 never existed. Yet despite its factual discrediting, *the Canadian connection* continues to circulate and exert tremendous affective force as a mediapheme encapsulating the specter

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<sup>77</sup> Audrey Macklin. 2002. Presentation. *Article 13: Open Borders and Refugee Concerns* (Colloque). Université du Québec à Montréal (Montréal, Québec). May 2002.

of a phantom terrorist body that remains the focal point of immigration security policy targeting.

What is significant in the aftermath of the 9/11 media event is how the fact that a Canadian connection to 9/11 never existed has been taken to be secondary to the fact that it *could have* by those media commentators and politicians who would even acknowledge its non-existence. As the (previously cited) *Vancouver Sun* editorial “Continental Perimeter: Just get on with it” put it: “While there's no evidence that any of the terrorists used Canada as a base, there's enough—and has been for years—to suggest our border controls aren't as secure as they could be.”<sup>78</sup> The actuality of the non-existent “Canadian connection” is glossed over, eclipsed by the potential for one to have existed. This *potential*, viscerally rendered and made palpable as an affective fact through the news event, became the basis for governmental action and policy targeting regardless of the actuality of its non-existence.

In this way, the biopower of the news media is not only at work in the affective flow of media amplification and hyper-circulation, or the affective spirals of suspicion and fear produced after 9/11, but also through the affective facts coalesced in and through media events, along with the media non-events they simultaneously produce. Brian Massumi (2005) has argued that *affective facts* emerge through the effects produced by such events, their amplification of affective qualities and potentials, and the preemptory logics that they put into place. As Massumi puts it,

The event is an eventuality that may or may not occur, but does nevertheless in effect. The author of the threat is a subject who may or may not be identifiable, or even exist, yet who nevertheless is an effective social actor... The identity of the possible object determines the affective quality of the actual situation. And that's a

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<sup>78</sup> *Vancouver Sun*. “Continental perimeter: Just get on with it.” November 6, 2001.

fact. Its quality has actualized, without the object itself materializing (Massumi 2005, 9).

The news events I have considered in this and my opening chapters have been determinant in constructing and circulating the affectively dramatized potentials of threatening trafficked and terrorist bodies—potentials that coalesce as affective facts through their visibility and hyper-circulation as mediaphemes. The affective spirals produced through the circulation of these mediaphemes actualize real effects, despite or precisely because their object (“the Canadian connection”) does not exist and cannot be materialized. As Massumi puts it, “the affective fact easily consolidates into something that is taken for and functions as empirical fact ” (10). Through these media events, affective facts are surfaced and coalesced to the extent that they are taken to be real and exert real effects, regardless of their actuality or factuality. In particular, such affective facts produce real effects and racialized impacts on those whose bodies become attached to or associated with the threatening potentials they generate.

For instance, in April of 2007, an Algerian refugee claimant to Canada, Benamar Benatta, spoke out publicly to the media regarding the five years of detention he had suffered in the United States following the events of September 11, 2001.<sup>79</sup> Benatta had taken a bus to Buffalo and filed a refugee claim at the Canadian border on September 5, 2001 after participating in a six month training program in the United States as part of an exchange program between the US and Algerian militaries. He was declared a person of interest by Canadian border officials, and was detained while they investigated. On the evening of September 11, 2001, he was questioned by the FBI and transferred to a high security detention center in the United States. Despite being cleared of any connection to

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<sup>79</sup> *CBC.CA*. “Algerian held in U.S. nearly 5 years wants Canada’s role probed.” April 18, 2007.



terrorist activity by the FBI in 2001 (which he learned only five months after the fact), he remained in detention until July of 2006 when he was suddenly transferred back to Canada and offered temporary residence while pursuing his refugee claim. The reasons for his sudden release have not been disclosed. The affective fact of the “Canadian connection” has had very material effects on the lives and the detained bodies of those it has been used to target.

Furthermore, as this chapter has sought to show, the congealing of affective facts through news media events come to form and inform the basis of governmental policy action. Entire policy frameworks become articulated and constructed around such affective facts, the “Canadian connection” and the bogus refugee as asylum shopper being two cases. A crucial process I have sought to account for is the way in which affect comes to infiltrate and shape the “rational” deliberative policy process, the spectacular media events I have considered being a key site of this form of biopolitical governmentality. Often, the very things that are taken to be the most self-evident, reasonable, rational, and taken for granted are shaped through the affective spirals and resultant affective facts that media events produce. The affective climate around the “war on terror” after 9/11, one that quickly became a transnational one, rapidly produced a “common sense” of governmental anti-terrorism policies that can only be made sense of in the context of the affective waves of threat, rupture, and acute, amplified fear, insinuation and suspicion that the mediatization of 9/11 produced. The criteria of “reasonableness” that security certificates are held up to by the Federal Court can only begin to be framed as reasonable, as constituting a specific form of anti-terrorist governmental rationality, in a post-9/11 affective climate of racialized targeting of Arab and Muslim bodies, in which the slightest hint of suspicion becomes tantamount to the

legitimation of repressive and preemptive security measures. It is in such an affective climate that the trafficked migrant bodies of the Fujianese ghost ships, the phantom, terrorist cellular bodies of the Canadian connection, and actual racialized bodies such as Benamar Benatta's became the focal points and "reasonable," "common sense" targets of post-9/11 immigration policies and rationales.

Yet it is in the *media non-event* of the Canadian connection's disproof that the biopolitical workings of news events and their governmental impacts become the most stark, especially when set against the massive scale and arsenal of post-9/11 immigration policies put in place to counter this Canadian connection that never was. That the confirmed disproof of any Canadian connection to the 9/11 attacks was never picked up or circulated at anything close to the intensity or scale of the initial Canadian connection story speaks to the degree to which media non-events are produced and constituted through the news media as much as media events are. The production of the discredited Canadian connection as a *media non-event* was closely tied to the amplification and hyper-circulation of the presumed Canadian connection as an affective fact.

Media non-events are effects of the news media's capacities for affective modulation, its amplificatory capacities and the remainders of what they chose not to amplify. Media amplification, the media's capacity to zero in and fix on the minute, partial, or non-existent and transform it into the bold, visceral, eventful, always leaves other elements out, producing remainders through the media's simultaneous capacity to de-emphasize, overlook, decontextualize, leave aside. What is amplified and what is left out, what is remaindered, what fails to take flight, or win the focus of the media eye—these elements of media events and non-events emerge through the everyday negotiations of news-making and media spin, attributable as much to the control agencies

that regulate the news media (from elite interests to profit) as they are to the chance elements that play out in the circulation of media events in the complex mediascape of this time. But as this chapter has sought to make clear, media non-events matter,<sup>80</sup> as much as the media events of which they come to constitute a shadow, virtualized trace. The hyper-presence and palpability of the phantom terrorist body produced as an unavoidable affective fact in the wake of 9/11, its attachment and embodiment in an ongoing series of actual Arab and Muslim bodies (Benatta's, Charkaoui's, Harkat's, and so on) targeted through immigration security measures, puts into stark relief the lack of presence, the non-circulation and invisibility of the disproven Canadian connection. The affective fact of the phantom terrorist cell and the media non-event of the nullified Canadian connection are crucial elements in the securitized biopolitics of post-9/11 immigration policy.

The impacts of such affective facts on the actual bodies of those they target are dramatic. At the People's Commission on Immigration Security Measures held in April of 2006, the mother of security certificate detainee Adil Charkaoui, Latifa Charkaoui, testified how, since his release under extremely restrictive conditions of house arrest, she had been forced to become the security surveillor of her own son at the same time that she was surveyed:

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<sup>80</sup> In emphasizing here why *media non-events* matter, I am seeking to navigate away from both the reductionism of propaganda or ideology models of the media that only deal with these non-events as intentionally and consciously suppressed or distorted on a pre-determined, orchestrated level (though this is not to deny that they sometimes, and in many cases may be), and a Foucauldian approach to the productivity of discourse that refuses to consider the erasures and elisions of discourses (as this, for Foucault, would inevitably fall into an ideological model). Yet, as I show here, the non-existence of a Canadian connection was never actually suppressed or hidden. It was reported by the news media, however sparsely, and did "make the record." It was just not circulated or amplified to anything approaching the scale or degree to which the initial Canadian connection story was. Yet, I also want to insist that the elision and lack of amplification of the disproven Canadian connection, its failure to register as a hot item of the day or a fact that matters at all (let alone a scandal or reversal of policy course), does matter and carry serious impacts for post-9/11 governmental outcomes (something that a Foucauldian discourse approach that only considers the surface of discourse is not likely to account for or emphasize to the same extent).

We are followed everywhere, our lines are tapped, a camera has been installed on the street where we live...[I face] the same conditions as my son. I have to follow him everywhere. I must do the work of a police officer...even through I am not paid! At the same time that I survey my son, I am also surveyed (*People's Commission on Immigration Security Measures* 2007, 62).

Latifa Charkaoui's remarks vividly capture the affective impacts of surveillance and the restriction of mobility to which her family has been subjected. They speak to the extent that these securitized biopolitics of control impose, diffuse, and demand that their targets internalize its control functions, intimately and from within, at the same time that they increasingly target and inscribe themselves on migrant bodies.

**RISKY BODIES AT THE SMART BORDER**  
**A MONSTROUS BIOPOLITICS OF SECURITY AND PROTECTION**

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*Opening the front door to close the back door...porous borders...broken gates...Canadian connection...smart borders...zones of confidence.* If we pay attention to some of the key buzzwords of post-9/11 migration politics, we notice that, while the language has not dramatically changed in its preoccupation with domestic and bodily tropes of penetration and permeability, the affective pitch and the inscription of these tropes within a wider governmental discourse of war (on *terror*) have. The sentiments provoked through the media event around 9/11...that *everything has changed, nothing will ever be the same, it's a different ballgame now*—that sense of rupture and alacrity have proven to be both volatile and politically effective. The affective amplification generated by the media event, the palpable affects of fear and suspicion circulated and directed towards refugee-cum-terrorist bodies, served to fuel a reconfiguration of immigration policy as an instrument of war.

At the same time, the resolutely optimistic rhetoric of Canada as a welcoming, generous nation for immigrants and the reassuring, security-oriented rhetoric of safe zones of confidence and protection functioned in tandem to publicly frame a reinvigorated policy of selective closure. A crucial component of this public and popular reframing of Canadian immigration policy by Elinor Caplan and CIC officials was the celebratory trope of the open front door—the crux of its efficacy tied to how the promise of opening the door wider for *desirable* immigrants and *genuine* refugees effectively functions

to intensify the screening of and closure to migrants, not only at the so-called back door, but the front door as well. Indeed, many critics of the STCA argue that it effectively constitutes a closing of the front door to those migrants who have no choice but to transit through the United States en route to Canada, rendering the precarious back door routes of illegalized cross-border movements the only option for many migrants on the move (CCR 2005).

This concluding chapter considers the implications of the “smart border” regime that has emerged through the IRPA and the STCA for a reconfigured post-9/11 biopolitics of protection. Specifically, it examines how the expansion of preventative forms of governance of the smart border has led to an increasing targeting of risky bodies, potential acts and precarious movements. To do so, it begins by considering the specific roles played by elements of the news media in the post-9/11 governmentality of security.

## **1 Leaking Threats: The News Media as Extensions of the Security State**

Fifteen minutes after I was arrested, the 21<sup>st</sup> of May, 2003, a journalist called my mother to tell her the news and to get some comments, the family's comments. The first person who knew about my arrest was a journalist. Now I have evidence that he is working closely with CSIS...The second night from jail...the second day from jail, I called lots of media: CTV, Radio Canada, CBC...I talk to them and give my own version, they accept it and they give it to the public opinion, so it was for me easy to reach the media...I don't want to discuss all the ideological currents. It's clear, if you send a letter from jail and you are suspected to be a terrorist, they will not publish it.

—Adil Charkaoui<sup>1</sup>

Security certificate detainee Adil Charkaoui's testimony regarding the circumstances of his arrest offers important insights into the governmental surveillance

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<sup>1</sup> Adil Charkaoui. 2005. "Adil Charkaoui on the Media." *Measuring Security Measures*. Citizenshift. Autumn 2005 [cited October 2006]. <http://citizen.nfb.ca/onf/info?aid=4462&eid=16664&atid=27>.

continuum between the news media and the security agencies of the Canadian government. The biopolitical role that elements of the news media played as extensions of the security state became a crucial dimension of post-9/11 racial profiling: in making the wider affective climate of suspicion and insinuation target and stick to certain bodies in an ongoing, orchestrated manner. This media-surveillance continuum operates in a number of ways: through the mutual links between journalists and unnamed governmental sources who leak selective, partial, or outright inaccurate information regarding targeted individuals; the reliance of the government on news media articles in the legal proceedings against security certificate detainees according to very loose rules of evidence; and the impacts of the media's profiling practices on the people targeted. In this way, the news media often plays a kind of extended surveillance role in the everyday lives of these people. Such practices indicate the extent to which the news media constitute a critical nexus in the biopolitical regulation of migrant bodies in coordination with the governmental agencies of the security state.

The critical and often highly damaging role that the practice of governmental media leaks have taken in post-9/11 security politics first gained wider public attention with the rather notorious raid of *Ottawa Citizen* journalist Juliet O'Neill's home, gaining subsequent prominence in the Arar Commission findings. In October and November of 2003, in the immediate wake of Maher Arar's return to Canada after his rendition to Syria by US authorities where he was detained and tortured for a year, a series of media stories appeared that cited unnamed government officials stating that Arar had not been tortured, that he had provided information to the Syrians about al-Qaeda cells operating in Canada, and that he was involved in terrorist activities. The Arar Commission found that all of this information was obtained under torture based on a confession Arar signed

but never read. In January of 2004, the home of O'Neill, author of one of the articles containing extensive leaked information,<sup>2</sup> was raided by the RCMP in an attempt to determine the source of the leak that O'Neill refused to disclose.<sup>3</sup> The subsequent media uproar that followed was largely framed in terms of outrage over the infringement on press freedoms and the "police state" tactics of the government against journalists.<sup>4</sup> Rarely did the media controversy address or provoke a larger questioning of the role of governmental media leaks, of the media's use of unnamed sources, or of the impacts of such leaks on the lives of those accused of terrorism.

The findings of the Arar Commission in September 2006 included strong criticism of the government's use of media leaks and the damage they had wrought on Arar. According to the Arar Commission Report, "Over a period of time, Government of Canada officials intentionally released selected classified information about Mr. Arar or his case to the media...typically attributed to an unnamed government official" (*Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* 2006a, 46). The report noted that "unlike many other actions of Canadian officials... leaking information is a deliberate act," and that several of the leaks were "purposefully misleading" and "intended to do...[Arar] harm" (263). It also noted that, like Charkaoui, Arar has stated, "the leaks were part of an orchestrated smear campaign by informed government officials" (*Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* 2006b, 491).

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<sup>2</sup> Juliet O'Neill. "Canada's Dossier on Maher Arar." *Ottawa Citizen*. November 8, 2003.

<sup>3</sup> To this date, none of the governmental sources of any of the media leaks in the Arar media coverage have been identified or resolved. The source of the O'Neill leak is the subject of an ongoing criminal investigation.

<sup>4</sup> Bruce Garvey. "Raids evoke outrage at 'police state' tactics." *Ottawa Citizen*. January 24, 2004.



One of the media leaks the *Arar Commission* referred to was a story by CTV reporter Joy Malbon in October of 2003 that named security certificate detainee Mohamed Harkat as a member of the alleged Ottawa-based terror cell that Arar was (incorrectly) reported to have provided information about in his “confession” to the Syrian government.<sup>5</sup> In public hearings at the Arar Commission, lawyers for Harkat made submissions and testified as to their concerns regarding the “slow leaking of information that appears to come from government sources...[as] part of this process of blackening...[Harkat’s] reputation” (*Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* 2005, 9325). In particular, they mention the CTV report by Malbon, O’Neill’s article, and a series of articles on Abdullah Almalki that appeared in the *Ottawa Citizen* by reporter James Gordon that cite anonymous RCMP or CSIS sources (9325, 9321). In the circular governmental loop that runs between the news media and state security agencies, the Canadian government submitted Malbon’s CTV report as evidence that Harkat was an al-Qaeda operative in the security certificate court proceedings against him. After unsuccessfully attempting to subpoena Malbon to testify as to her anonymous sources incriminating Harkat, Harkat’s legal team succeeded in having the news article discounted. As we shall see however, this was not a unique occurrence in the legal tactics employed by the Canadian government in security certificate proceedings.

One of the lawyers for a security certificate detainee that I spoke with confirmed the critical role that the news media played in service of the government security agencies, particularly effective in security certificate cases where the charges and evidence

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<sup>5</sup> Joy Malbon. “Arar provided info to Syrians: government sources.” *CTV.ca*. October 24, 2003. [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1066934412737\\_62343612/?hub=TopStories](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1066934412737_62343612/?hub=TopStories) (accessed December 2006).

against the accused are kept secret, leaving plenty of leeway for public insinuations and suspicion to stick to the accused. According to the lawyer, “A lot of...the alleged terrorism...is the incompetence of CSIS and the RCMP...a fair bit of it is...The people [journalists] who are leaking stuff to smear people are certainly doing a service for the government agencies that are feeding them the information.” The lawyer noted that the current “role of the media in service of the security agencies” has historical precedents:

Juliet O’Neill certainly fulfilled that role; Sean Ring\*<sup>6</sup> [of the *National Post*] fulfills that role all the time...There’s been a historical role for this. Pierre Worth\* at the *Sun* used to basically put out information that smeared people for the security service of the RCMP and later for CSIS. There was another guy at the *Globe* who used to do it for the criminal intelligence side of the RCMP.<sup>7</sup>

The lawyer also recounted an anecdote that shows the extent to which such links between the news media and government were upheld by the news organizations as well as constituting common knowledge within governmental circles.

One of my favorite stories is the guy at the *Globe* named Paul Cloud,\* who was so much regarded as in the pocket of the RCMP that his nickname was Corporal Cloud. And one day I was at a journalism conference at Western, and...the editor of the *Globe* [at the time was also there]. He does this talk about how wonderful the *Globe* is, and how independent it is, and how it’s beholden to nobody. I came over to him afterwards and I said, ‘How can you say that? I mean, you’ve got a guy on your staff that is so much in their pocket, he’s known as Corporal Cloud.’ He looks at me and he says, “Haven’t you heard? He’s been promoted. He’s now Captain Cloud.”<sup>8</sup>

As already alluded to, another aspect of the media-surveillance continuum in post-9/11 biopolitics concerns the government’s use of news media articles in court proceedings against security certificate detainees. One of many ways in which security certificate proceedings constitute an exception to standard legal procedures in Canada

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<sup>6</sup> All the names in the following two quotes marked with an asterisk have been changed.

<sup>7</sup> Interview with Immigration Lawyer. February 7, 2007. Telephone Interview (Montréal, QC – Toronto, ON).

<sup>8</sup> Ibid.

regards the absence of rules of evidence. Section 78j of the IRPA states that the Federal Court judge “may receive into evidence anything that, in the opinion of the judge, is appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.”<sup>9</sup> This can and has allowed the government to introduce news media and internet articles of all sorts, many of which contain hearsay and often inaccurate information. As the security certificate lawyer previously cited notes, “the government...file[s] all sorts of stuff that’s outrageous...A whole lot of public source material is dumped on the court with no explanation...[They will] quote from, a whole bunch of media, and misquote it at times.”<sup>10</sup>

At the People’s Commission on Immigration Security Measures in Montréal in April of 2006, Matthew Behrens of the Campaign to Stop Secret Trials in Canada gave testimony regarding several such instances in federal court hearings for security certificate detainees. In the proceedings against Hassan Almrei<sup>11</sup>—who had briefly worked as a vendor selling small amounts of honey at a stand outside a public library in Saudi Arabia—the government introduced an article by Judith Miller<sup>12</sup> of the *New York Times*. The article cited unnamed US government sources who state that it is possible that some individuals use the honey business as a front to smuggle weapons for al-Qaeda operations. When CSIS was asked if there were any other sources to substantiate those claims, they introduced a BBC article that essentially quoted Miller’s *New York Times* article, as well as a CBC news item that quoted the BBC story. As Behrens noted, “This becomes three

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<sup>9</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, Sec. 78.

<sup>10</sup> Interview with Immigration Lawyer. February 7, 2007. Telephone Interview (Montréal, QC – Toronto, ON).

<sup>11</sup> For a detailed analysis of the Federal Court of Canada hearings on Almrei, see Razack 2007.

<sup>12</sup> As Behrens noted, Miller was the reporter who took the lead in reporting on the search for “weapons of mass destruction” prior to the US’ 2003 invasion of Iraq.

pieces of information to be used against Mr. Almrei, and in the end, CSIS admits that they have no proof whatsoever. But the minute you plant that allegation, that sticks...like honey..."<sup>13</sup>

Both Behrens and the security certificate lawyer I interviewed referred to the submission of a senior Middle East analyst with CSIS who testified on behalf of CSIS under the initials of "P.G." at a bail hearing for security certificate detainee Mahmoud Jaballah in September of 2005.<sup>14</sup> P.G. argued against the release of Jaballah and the previous conditional release of Charkaoui based on the claim that the threats that the men posed was not neutralized by the years that they had spent in detention (which was the rationale used by the judge to release Charkaoui), but instead was a limitless, perpetual threat. He based his assertion on an unquoted *Washington Post* article that claimed that 10 of the detainees released from Guantanamo Bay returned to Afghanistan to engage in violent activities against Western coalition forces. What was left out of the testimony was that the *Washington Post* article in fact stated that those 10 former detainees constituted less than 5% of the 202 detainees released from Guantanamo Bay, the rest of whom had not gone on to engage in violent activity once they were freed.<sup>15</sup> In this sense, CSIS was advocating for a more extreme policy than that of the US government with regards to indefinite detention of terrorist suspects. According to Behrens,

what we do see introduced [by the government in security certificate proceedings] is hearsay...One of the most consistent critiques of CSIS over the past twenty years [by the Security Intelligence Review Committee] is the exaggeration of

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<sup>13</sup> Matthew Behrens. 2006. "Abuses in cases of Jaballah, Almrei and Mahjoub (Testimony)." People's Commission on Immigration Security Measures. April 23, 2006. Montréal, Québec.

<sup>14</sup> See: *Jaballah (Re)* (F.C.), 2006 FC 115, [2006] 4 F.C.R. 193.  
<http://recueil.cmf.gc.ca/en/2006/2006fc115/2006fc115.html> (accessed December 2006).

<sup>15</sup> John Mintz. "Released Detainees Rejoining The Fight." *Washington Post*. October 22, 2004.

threat assessment, withholding of information which runs contrary to their theory, and getting the facts wrong...[of] substituting feelings...for facts.<sup>16</sup>

While the latter statement may rely on an overly stated fact/emotion dichotomy that is characteristic of deliberative legal approaches, it nonetheless effectively captures how the wider affective climate of suspicion and insinuation permeates and operates within the legal proceedings of the security certificate process.

As evoked in the previously cited statement by Charkaoui, the final and most telling aspect of the media-surveillance continuum concerns the impact it has on the everyday lives of the individuals targeted, along with their families and communities. The intensity and affective amplification of the news events regarding the governmental targeting of security certificate detainees, migrants, and those accused of terrorism are accompanied by a further process of targeting by the news media and wider public. The media come to play a sometimes overwhelming surveillance role in the everyday lives of those targeted, in ways that severely impact their everyday social interactions and treatment by the communities around them. The Arar Commission report notes that the media "leaks had deleterious effects on Mr. Arar's reputation, psychological state, and ability to find employment. The impact on an individual's reputation of being called a terrorist in the national media is obviously severe...Labels, even inaccurate ones, have an unfortunate tendency to stick" (*Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* 2006a, 262). The report notes that the leaks had a devastating and re-traumatizing effect on Arar. His social isolation from the wider Muslim community in particular was exacerbated following press leaks (as many were fearful of becoming

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<sup>16</sup> Matthew Behrens. 2006. "Abuses in cases of Jaballah, Almrei and Mahjoub (Testimony)." People's Commission on Immigration Security Measures. April 23, 2006. Montréal, Québec.

targeted by association). This ostracism extended to Arar's ability to obtain employment, and the economic effect on the Arar family was "close to catastrophic" (262).

At the People's Commission on Immigration Security Measures, Sophie Lamarche Harkat offered among the most evocative and detailed of accounts regarding the impact on her daily life of the media event around the arrest of her husband Mohamed Harkat under a security certificate in 2002. It is worth citing at length, because it powerfully captures many of the qualitative and affective dimensions of being thrust into the center of such a sensational, charged news event.

*Mohamed was arrested December 10<sup>th</sup>, 2002, which also happens to be Human Rights Day. It was a very public arrest outside our Vanier apartment while he was taking out the garbage. Many neighbors were watching the whole thing as it was taking place outside from the balconies and I remember some of the testimonies on the news the next day about us saying: "They never said anything. They were very quiet neighbors." And anybody who knows me or happens to know my husband knows that we are very friendly people. I knew all the names of my neighbors, across the hallway and beside, so it was false testimonies from the start.*

*There was also something very funny and ironic on the news the day after my husband was arrested—that there was a large suspicious box that had come into our apartment, which was delivered by my husband. That was the statement that was in the newspapers. And that large suspicious box happened to be a 32-inch TV, which was my anniversary gift to my husband and was delivered by a Montréal delivery man. We were also keeping a lot of moving boxes because my mother was also moving at that time. Right from the start the information in the paper was taken out of context.*

*He was then surrounded by many police cars, RCMP and local police, including a CSIS agent. And the Ottawa Sun was on the case within a few hours. They had slipped a business card under my door a few hours later when I returned to my apartment to pick up a few clothes and important papers because I was afraid that the police would have access to a search warrant. But they never asked or entered the apartment or had access to the computer. I myself was never interviewed by CSIS or the police at any point before or after his arrest. I was called around 2 in the afternoon and told Mo was arrested, did not know why, but that it was related to terrorism...<sup>17</sup>*

What is notable in Lamarche Harkat's testimony from the outset is the immediate and constant presence of the news media as part of the experience of the arrest, as well as its traumatic impacts. In the confusion, shock and disarray that accompanied the arrest

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<sup>17</sup> Sophie Lamarche Harkat. 2006. "Personal Testimony." People's Commission on Immigration Security Measures. April 21, 2006. Montréal, Québec.

of her husband, the descent of the news media forced Lamarche Harkat to flee her home.

The news media became agents of surveillance and displacement, not only for her husband, but for Lamarche Harkat as well:

*It was the shock of my life to think that my husband could be accused of such a terrifying thing, and I never had doubts in my mind. I was told that he was in jail. I did not know if I was ever going to see him again; if he was going to be deported. I had no clue what was about to happen. I was absolutely terrified. I thought I was all alone in Canada to go through this. I did not know at that time that other cases like this existed.*

*I then called my mother frantically. She could not understand what I was saying on the phone, only that I was screaming at the top of my lungs at the immigration lawyer who we had at the time. My mother said she will remember the tone of my voice for the rest of her life. The lawyer and myself did not know what was happening or what the security certificate was. We had no idea it was going to last for this long. I was right away asked to put a \$10,000 payment on the same day, which I did not have. So, my mother used a large portion of her pension to give to the lawyer.*

*I then moved with friends to be away from the media, and the next morning we were all over the national news. I know for a fact that the Ottawa Citizen had an internal memo circulating looking for the wife of the presumed terrorist because I had a friend who was working at the Ottawa Citizen. I was asked to leave my apartment as soon as I could, media from all over the country were filming the balcony and the windows where I live, saying, "This is where the terrorist lived."*

As Lamarche Harkat shows, the news media's amplification of the most minute details of Harkat's life and possessions transform them into portents of a lurking threat.

The most banal of possessions, from a color TV to a Britney Spears cassette, become evidence of a terrorist connection.

*I'll go quickly through what the media is all about, because there's been a couple of things that the media has said that surprised me. First of all, I'd like to show the front page of the Ottawa Sun, who had exclusivity the morning that my husband was arrested. It says "Ottawa Terror Takedown." And there is a picture in the corner that says: "I have every reason to believe that there is a connection that we consider serious for national security."*

*Just to show how ridiculous this whole thing is... The media had noticed what was in my husband's car and they say: "After arresting him, officers searched his mail. Even his car was searched. Yesterday, Harkat's car sat in the parking lot. Inside you could find several audio tapes from Britney Spears, her debut album and many Arabic cassettes as well." As much as I am ashamed that my husband listens to Britney Spears, I think this is the first clue, the first goddamn clue... [that something is questionable]...*

As in Charkaoui's earlier statement, Lamarche Harkat notes how the close governmental links between the news media and government sources mean that the media come to play an even more pervasive as well as invasive role in the intimate lives and relations of those targeted. Lamarche Harkat's testimony gives a vivid sense of what it is like to be subject to the media's scrutiny and demand for endless accessibility. Also stark is the sense of being under constant surveillance by both a media and a state apparatus that seemingly blend into one another.

*One thing that upsets me very much is that the media always gets the story first, even before my lawyers even get to call us. So, it is always a very trying experience to receive news from strangers. And once I was in a shopping centre and we almost fainted on the spot when they said the decision came in, and the thing is, it wasn't in regards to my case, it was in regards to another case from Toronto.*

*Because of that, I have not gone on holidays or visits to family for many reasons, because I have to stay accessible at all times; I'm on 24-hour call from the media. Whenever something happens in the world relating to terrorism, I get a call asking: "Do you wish to comment on this." It's emotionally draining to have to give conferences and interviews by the hundreds now. And my whole entire life is unstable: health, financial, job, and personal—which I haven't gone through. I have no privacy. Every single detail of my life is public. We're on there for people to judge.*

*My whole life was turned upside down from one day to the next; I became the wife of presumed terrorist in the eyes of many. I also felt like a widow from one day to the next... We live in constant fear that he could be deported, causing tremendous stress on us and the family and the supporters who have gotten to know Mo.*

*And I feel under non-stop surveillance. I know that our phone is tapped. And I don't know if CSIS will ever be off our backs and if I will ever find good employment again or if Mo will ever be able to find good employment. I feel like I don't know if I will be able to see the light at the end of the tunnel, but we hope that one day we will see some kind of justice.<sup>18</sup>*

In this way, the news media come to act as extensions of the surveillance practices of state security agencies. The various practices through which these media and state forms of surveillance and profiling blend together have been crucial factors in the post-9/11 securitized biopolitics of migration.

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<sup>18</sup> Sophie Lamarche Harkat. 2006. "Personal Testimony." People's Commission on Immigration Security Measures. April 21, 2006. Montréal, Québec.



## 2 Broken Gates: Problematizing the “Broken System”

In addition to the intensified surveillance role played by elements of the news media, the intervening years since 9/11 have seen an ongoing series of news events that continue to focus on Canada’s “broken” immigration system. Despite attempts by government officials to convey a reassuring image of closed back doors and continental zones of confidence, much of the media and right-leaning politicians have extended the preoccupation with porous borders by making a spectacle of Canada’s “broken gates.”

For instance, during the governmental mandate of the Martin Liberals under CIC Minister Judy Sgro, two scandals erupted in the media that were respectively dubbed “Strippergate” and “Pizzagate.” In November of 2004, a controversy broke out in the news media when it was revealed that Sgro had granted a special ministerial permit to allow Alina Balaican, a Romanian woman who had come to Canada under the temporary worker program to work as an exotic dancer, to stay in Canada while she awaited the processing of her status after having married a Canadian. At the same time, it was revealed that Balaican and her husband had volunteered on Sgro’s election campaign, and allegations of a quid pro quo were leveled. Although the allegations of a potential conflict of interest had to do with Sgro’s apparent preferential treatment of someone who had worked on her election campaign, much of the media coverage was fuelled by the salaciousness of a scandal centered on a migrant sex worker.<sup>19</sup> The moralistic tone of the coverage focused on the exotic dancer program that brought 600 women a year to Canada as temporary workers, 83% of them Romanian in recent years.

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<sup>19</sup> Colin Freeze. “Romanian strippers find Canada ideal gig.” *The Globe and Mail*. November 23, 2004.

The media scandal played on racialized associations and assumptions of the criminalization of Eastern European migration in the post-1989 period, most commonly evoked through the figures of victimized, trafficked Eastern European women and violent Eastern European Mafia men (Andrijasevic 2004, 151). As Andrijasevic has shown, such portrayals are tied to wider social anxieties about the boom in the precarious labour migration of Eastern European women from post-socialist transitional societies—particularly through sex work. These anxieties are stabilized by seeking to immobilize Eastern European women's bodies within the spaces of the home and their home nation (151).

The media uproar largely obscured the fact that the discretionary power of a ministerial permit (a common and often delegated procedure) was called upon in cases such as Balaican's because of changes to family class sponsorship provisions in the IRPA. The new provisions now require out-of-status migrants who marry a Canadian to leave the country and obtain a visa while their sponsorship application is processed—something that can take several months to several years.<sup>20</sup> In the heat of the media storm, the launch of an ethics probe by a Conservative Member of Parliament, and calls for her resignation, Sgro temporarily stepped down from Cabinet while the ethics probe was in process. Soon after, the Liberal government announced the cancellation of temporary workers visas for exotic dancers.

In January of 2005, Sgro was again embroiled in a media controversy that led to her resignation. Harjit Singh, a refused refugee claimant fighting his imminent deportation after 17 years in Canada, leveled accusations against Sgro that she had promised to resolve his immigration status in exchange for free pizza deliveries to her

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<sup>20</sup> Lorne Waldman. "Sgro furor masks unfair policy." *Toronto Star*. November 30, 2004.

election campaign office. In addition to the scandalous nature of his claims, news media soon focused on Singh's past prosecutions for credit card and document fraud, along with his alleged mastery of loopholes in the immigration system that allowed him to stay in Canada for as long as he had.<sup>21</sup> At the height of the scandal, Sgro sued Singh for libel. Sgro soon resigned her Cabinet position,<sup>22</sup> while Singh was deported to India.<sup>23</sup>

In April of 2005, the *Globe and Mail* ran a seven-part series of articles entitled "Broken Gates." In one of the installments, journalist Maria Jimenez focused on the scandal of an immigration system out of control based on the Sgro scandal. Each installment focused on a different facet of what it deemed the "broken gates" of Canada's immigration system, including the case of Harjit Singh; a people-smuggling chain; and Canada's "failure to deport even hardened criminals" such as Hungarian Mihaly Illes who "wrap themselves in the protection of refugee rights."<sup>24</sup> In the first installment of the series,<sup>25</sup> a giant maple leaf welcome mat is pictured on the front page accompanied by the bright red headline text: "Harjit Singh wept as he was deported. Despite his fears of torture, he is living well in India. His case exemplifies an immigration system in which the right people can't get in, and the wrong people can't be forced out."

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<sup>21</sup> Don Martin. "Singh played the system." *Calgary Herald*. February 5, 2005.

<sup>22</sup> As a result of subsequent elections and cabinet shuffles, CIC has had six different Immigration Ministers in six years (with the appointment of Diane Finley to the post in 2007), making it one of the most troubled portfolios in the Cabinet. Phinjo Gombu. "Sixth minister in 6 years shows portfolio is getting short shrift, advocates say." *Toronto Star*. January 5, 2007.

<sup>23</sup> Singh later retracted his claims against the Minister, which prompted her to drop her libel suit. In the ethics probe, Sgro was cleared of intentional wrongdoing in the Balaican case, though she was found to have been put in an unwitting conflict of interest by her staff.

<sup>24</sup> Colin Freeze. "Broken Gates: Criminals with refugee claims are well-versed on their rights." *The Globe and Mail*. April 18, 2005.

<sup>25</sup> Marina Jimenez. "Broken Gates: Canada's welcome mat frayed and unraveling." *The Globe and Mail*. April 16, 2005.

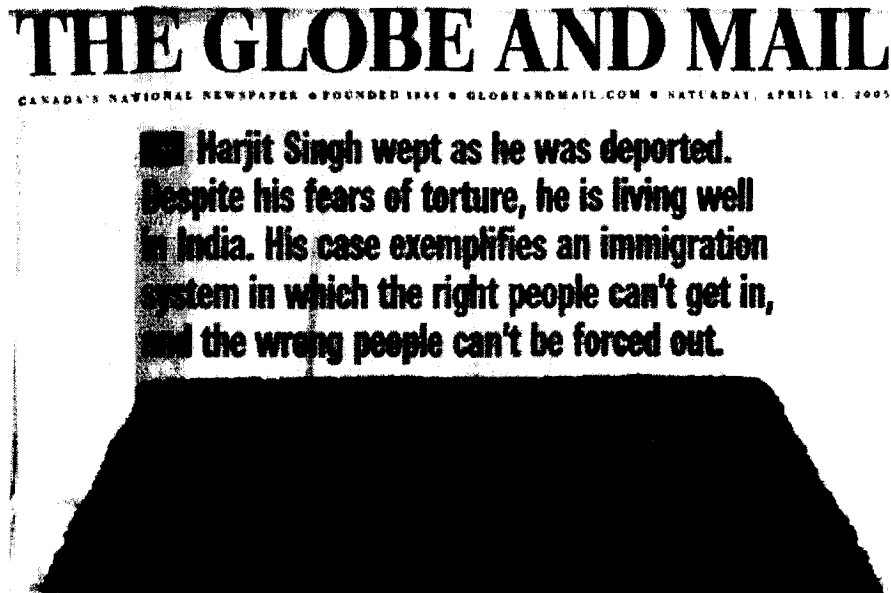


Figure 7.1: *The Globe and Mail*, April 16, 2005

The three page spread entitled “Canada’s welcome mat frayed and unraveling” goes on to unfold a narrative of mass manipulation of the Canadian immigration system by abusers such as Harjit Singh, whose “13-year moonwalk through the refugee process” culminated in his bringing down the Immigration Minister. Singh’s new “pale pink” mansion in an “upscale neighborhood” in Jalandhar, India is pictured, along with details of his four appeals to the Federal court and six humanitarian and compassionate claims (dubbed “appeals” in the article). The spread goes on to detail his lies about his criminal conviction in India (the basis for the rejection of his claims), and the \$485,000 Brampton home he sold to his children three weeks prior to his deportation. A poll entitled “The Refugee Door” is figured, showing that the Canadians polled agree that the refugee system requires a major readjustment (71% agree), that there are too many refugees who come to Canada claiming persecution versus refugees selected in camps, and that Ottawa should find ways to reduce the costs of the refugee system (80% agree).

The article gives prominent space to Diane Ablonczy (the Conservative immigration critic), and former Deputy Prime Minister John Manley, who describes the immigration system as “badly broken.” In a new articulation of the bogus versus genuine refugee dichotomy, Manley goes on to argue that Canada could meet its obligations in the matter of refugee protection solely by selecting refugees overseas from UNHCR camps, as these are “genuine people who have fled for fear of losing their lives...People who get to Canada because they’ve got money and connections, they shouldn’t be at the top of our list.”

One of the accompanying illustrations to the articles is a full-page length diagram that purports to depict the different stages and avenues of the Immigration process from a migrant’s first entry through to deportation. The diagram presents a veritable labyrinth of steps in a process that is meant to portray not the bureaucratic maze that migrants can get caught in, but the myriad of appeals and delays to which they can resort to manipulate the system.

### The Immigration process

The objective of the Immigration Inland Enforcement Program is to identify and remove persons who don't qualify for legal entry to Canada. Officers have the authority to investigate, detain and remove foreign nationals or permanent residents found to be in that country. There are about 350 Immigration officers in Canada. The Canada Border Services Agency process more than 8,000 Immigration cases annually. Here is a look at that process of acceptance and rejection.

FN - Foreign national, PR - permanent resident, IAD - Immigration Appeal Division, PDE - Port of entry, H&C - Humanitarian and compassionate consideration, PRRA - pre-removal risk assessment.

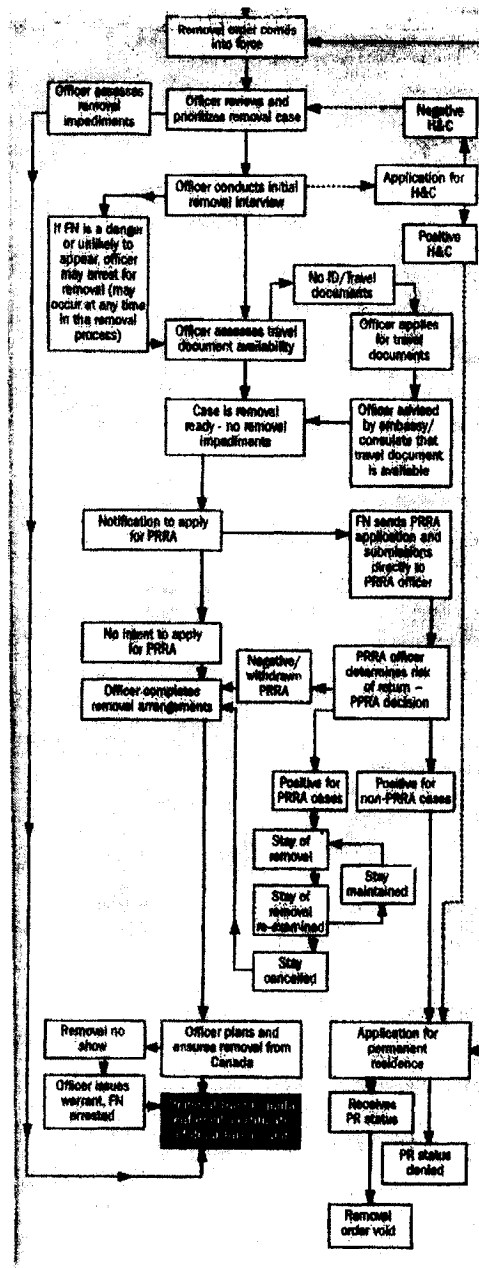
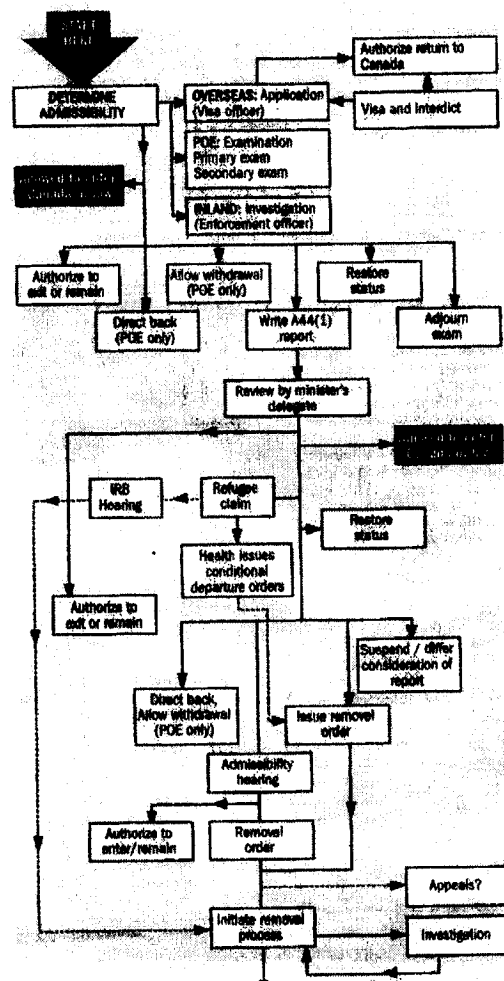


Figure 7.2: Richard Johnson / *The Globe and Mail*, April 16, 2005

As refugee advocates have pointed out, the chart conflates over five different processes that would be undertaken by over five different categories of claimants. No one claimant

would ever undertake the different avenues of appeal in successive steps as the visual presentation of the chart leads one to believe.<sup>26</sup>

The article closes with an imaginary scare scenario involving the future attempts of Harjit Singh to re-enter Canada subsequent to his deportation. “It would be difficult for Mr. Singh to return to Canada, but not impossible...he could put his finely honed skills to work and slip in under a new identity. If immigration authorities failed to detect the falsehood, he would not be fingerprinted. Unless he committed another crime, nobody would know that Harjit Singh was back.” The persistent use of the future conditional tense here is key... the *ifs* and the *woulds* indexing the extent to which the mediatized fear around immigration and security operates through the modulation of *potentials*, of threats that are presumed to require action based on mere supposition as potential scenarios rather than actual dangers; threats that materialize as affective hauntings rather than direct presences.

Yet the obvious question that hangs over this ongoing series of media problematizations of a “broken” system is crucial here—if the “gates of the nation” are continuously pronounced to be broken, what is the fix being advocated in the very mode of declaring them to be so? To return to the theories of governmentality discussed in earlier chapters, the very parameters through which a problem is constituted and configured serves to advocate specific governmental outcomes. What is perhaps unsurprising yet remarkable nevertheless is the consistency with which such ongoing problematizations of Canada’s immigration system in the news media consistently fuel an intensification of repressive enforcement-based responses as the solution. “Broken gates”

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<sup>26</sup> Heather Lash. “Who’s Abusing Whom?” FCJ Refugee Centre Op-ed. June 2005. <http://www.fcjsisters.ca/RefugeeCentre/docs/Archives/Whosabusingwhom.html> (accessed June 2005).

implicitly figure the nation as a gated community whose “gated” enforcement functions are never enough. In these media events, the nation’s “broken gates” constitute a mediapheme that performs a wider problematization of the immigration system as a crisis of inadequate enforcement. The circularity of enforcement-based problematizations lies in the ways in which a securitized or “law and order” enforcement-based framing of the problem inevitably invokes greater enforcement as a solution. The ongoing outrage and attacks leveled at existing avenues of “appeal” (despite the fact that they do not constitute real appeals) in such media outlets as *The Globe and Mail*’s “Broken Gates” series contribute to a public and political momentum against the implementation of the Refugee Appeal Division, such that refugee policy continues to operate in a state of exception from Canada’s own immigration law.

The ultimate effect of such problematizations of the immigration system is to further enhance the sovereign powers that increasingly govern the immigration regime, whereby sovereign operations of state racism seek to close off the possibility of procedural or substantive appeals to the sovereign decision-making (the “discretion”) of immigration officials. This is not to suggest or call for a “defense” of the existing immigration system or the unimplemented appeals process in the face of right wing attacks,<sup>27</sup> but rather to call attention to the modes and vantage points from which they becomes publicly problematized. In the preventative logic of the post-9/11 biopolitics of refugee protection, appeals come to constitute a further abuse in a system that presumptively frames refugee claimants as abusers of the system.

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<sup>27</sup> Nor is it to suggest that further legal measures could ensure a more “fair” use of the sovereign power of discretion (see Pratt 2005, 53-72).



Not coincidentally, the successive media scandals that swirled around CIC Minister Judy Sgro fed into and resonated off of the larger media scandal around the Liberal government sponsorship scandal, fomented by opposition politicians and the Conservative Party, in particular. The outpouring of outrage generated through the successive media scandals served to consolidate a rightward drift in Canadian federal politics that culminated with the victory of the minority Conservative government in January of 2006. In both cases, instead of putting into question the tremendous sovereign power that the Minister of Immigration exercises over the lives and fates of migrants or the patronage politics that structure the Canadian political system (both possible outcomes of these events had they been “spun” differently), the affective thrust of outrage in both cases was spun into a partisan political smear campaign against the ruling government in ways that ultimately favored the right wing electorally.

Significantly, with the advent of the Harper Conservatives to minority government power in 2006, the political force that has most backed the “broken gates” attack on the existing immigration system has adopted some interesting tactics to address the failures of the refugee system. In the fall of 2006, it came to light that the Immigration and Refugee Board was facing a massive backlog due to the reluctance on the part of the Conservative government to appoint new IRB Commissioners to adjudicate cases. By November 2006, a third of the Commissioners posts sat vacant (51 of 156) due to the reluctance of the Conservative party to appoint candidates that had been put forth under the previous Liberal government, with the ruling government also bypassing many already sitting Commissioners who were up for reappointment. The reasons for the Conservative government’s refusal to fill the vacancies were undisclosed. Yet many have argued that it is related to the very partisan patronage politics that the Conservatives had

so concertedly attacked the Liberals for prior to their election, coupled with the party's fear of negative media attention once it set into motion the same process of patronage appointments.<sup>28</sup>

The effect has created even greater wait times for refugee claimants, mass cancellation of hearings, and a growing backlog of pending claims to the point where the work of the tribunal has been severely hobbled. The backlog of claims almost doubled in the first quarter of 2007 alone.<sup>29</sup> In March of 2007, the chair of the IRB, Jean-Guy Fleury, and five members of the IRB advisory panel resigned in protests over the situation. The lack of political will on the part of the Conservatives to ensure the basic functioning of the IRB (according to their own terms) belies their political rhetoric and railings about the inefficiency of the system and the need to expedite claims and removals. Instead, the Harper government had opted to extend waiting times for refugee claimants and further nudge the system to the point of collapse.

The Conservatives' current strategy appears to follow the neoliberal tactics that have been applied to the Canadian health care system over the past 15 years, in which political measures are enacted that progressively undermine and under-fund the capacity of the existing system to function, so that it can then be claimed as proof that the system doesn't work (Arat-Koc 1999). Such a strategy of attrition appears to currently be a key tactic in the neoliberal biopolitics of immigration as well as health care in Canada (Abu-Laban and Gabriel 2002; Dorais 2006). In this way, much of the mainstream media's

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<sup>28</sup> *Radio-Canada.ca*. "Pénurie de commissaires pour des raisons partisans." 15 novembre, 2006. <http://www.radio-canada.ca/nouvelles/regional/modele.asp?page=/regions/ottawa/2006/11/15/001-immigration-commissaires.shtml&prov=ms&ref=ms&sym=rss> (accessed November 2006).

<sup>29</sup> Joan Bryden. "Refugee claim backlog soars in first quarter: 44 adjudicator jobs go unfilled, as Conservatives 'hijack' immigration board, critic says." *Toronto Star*. April 29, 2007.

problematization of “broken gates” effectively serves to intensify this sense of breakdown of the immigration system—to hasten it even.

Another key aspect of this mode of problematization relates to the repeated invocation of how the broken immigration system prevents the “right people” from getting in while the “wrong people” can’t be forced out. As with Caplan’s proclamation of open front doors and closed back doors, Canada’s benevolent desire to embrace the *right people* is foregrounded in a discourse that goes on to focus almost exclusively on the *wrong people’s* abuse of this benevolence. In *The Globe and Mail’s* “Broken Gates” series, one out of seven articles in the series focuses on the “doctor as taxi driver” scenario of highly skilled immigrants who are unable to find work in their field once they immigrate to Canada due to restrictive recognition of credentials, provincial licensing regulations, and labour market racism. The other six articles in the series focus on the abuses and threats posed by those deemed the “wrong people,” the undesirable and the precarious. This slippage from a focus on the desirable immigrant that got away into a disproportionate fixation on the precarious or undesirable, manipulative migrant that won’t go away serves to bolster Canada’s public image of a welcoming nation open towards immigrants while effectively enacting escalating policies of closure towards those same immigrants. The increasingly spectral figures of the desirable immigrant and/or authentic refugee are fetishistically invoked in such discourses to almost exclusively focus in practice on their monstrous counterparts.

### 3 Monstrous Biopolitics and Media Necropower

The closing scenario of the first article in the “Broken Gates” series,<sup>30</sup> that of an undercover Harjit Singh slipping into Canada under a false identity so as to abuse it all the more, offers up yet another phantom monstrous presence in an ongoing series of monstrous bodies that have haunted public discourses of immigration in Canada—most intensively since 9/11, but as we have seen, prior to it as well. This reliance on monsters for the public governmentality and reconfiguration of immigration policy is a crucial feature of the current biopolitics of migration in Canada. The media events I have considered have played a critical role in the ongoing iteration and production of these monstrous figures—from Harjit Singh to Ahmed Ressam and Nabhil Al-Marabh; from the shadowy snakeheads to the abject yet still suspicious human cargo of the Fujian Chinese ships; to the even more abject, feminized figures of trafficked sex workers from Fujian, the South, and Eastern Europe (Alina Balaican). And of course, the ever-present monstrous polymorph of the phantom, sleeper terrorist cell.

In “Monster, Terrorist, Fag,” Jasbir Puar and Amit Rai (2002) argue that the post-911 conjuncture has been marked by this uncanny return of the monster as a racialized and sexualized “abnormal” of the pre-modern kind first proposed by Foucault (1999), rearticulated in contemporary form through the figure of the sexually deprived, monstrous terrorist. In his subsequent article “Of Monsters,” Rai goes on to consider how this figure of monstrosity that organizes current discourses of terrorism not only connects to earlier pre-modern forms of disciplinary power through such abnormals as the

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<sup>30</sup> Marina Jimenez. “Broken Gates: Canada’s welcome mat frayed and unraveling.” *The Globe and Mail*. April 16, 2005.

Oriental despot, but how it is critically rearticulated and redeployed in contemporary regimes of biopower in the service of “life” (Rai 2004, 541, 550). Defending the state and its people against monstrous enemies becomes crucial to securing the life of the population.

The monstrous biopolitics of the post-9/11 political conjuncture have been effected and made effective by their fundamentally affective register, based on their mediation and circulation through an ongoing series of media events. If these biopolitics increasingly take shape around monstrous figures, it is these media events that affectively materialize and propel these monsters—the extent and pitch of their affective circulation rendering them almost palpable, if still ghostly, as menacing presences. This near-palpable quality that emerges from the accumulation of sensory phemes and their circulation produces them as affective facts. The serial and ongoing nature of these media events have, as I have shown, constituted and produced a wider repertoire of migrant monsters than just the terrorist variety, although, of course, the monstrous terrorist body remains at the center of this affective politics of demonization.

These media events have come to constitute a key and increasingly central node in the governmentality of migration, a diffuse node producing major effects on the communities and state policies they target. The affective nature of these media events shape an escalating biopolitics of exceptionality and normalization by zoning in on and amplifying the extreme case. They propel a governmentalization of the extreme—the monstrous as well as the desirable—as the core of governmental policy intervention. As Osuri (2006) argues, these practices of (what she calls) *media necropower*, media practices that target “monstrous” migrant bodies, particularly of Middle Eastern or Muslim appearance, are central to post-9/11 forms of governmentality. As a central

governmental arena for these practices of media necropower, immigration policies are increasingly formulated to target the “migrant monster” as an affective, never fully actualized, fact (Massumi 2005).

#### **4 Risky Bodies and the Biopolitics of Protection in the IRPA and the STCA**

In the face of these mediatized “monstrous migrants” and the immigration policy measures that have been put in place to stave them off, how can we understand the biopolitics of protection and safety that underpin the emergent “smart” border? A key element of this securitized biopolitics of protection is the way it operates through a racialized notion of risk,<sup>31</sup> resulting in the intensified targeting of racialized and sexualized migrant bodies, along with bodies marked as economically precarious. The preemptive thrust of these policies establishes a governmental regime based on the profiling and risk assessment of migrant bodies. Bodies on the move are monitored and targeted according to the *potential* level of risk they are deemed to pose.

This governmental focus on the potential acts and risks of migrant bodies operates in a simultaneously racialized, sexualized and affective manner. The affective climate of fear and insecurity produced through the media event around 9/11 and its focus on the terrorist body has meant that the assessment of risk on the part of border, security, and immigration authorities becomes primarily directed at bodies that *appear* suspicious according to both arbitrary and ostensibly neutral indicators that nevertheless encode

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<sup>31</sup> This analysis of the emergence of a securitized practice of risk in recent immigration policy is both more specific and more modest than Ulrich Beck’s theory of the risk society. As Aradau and Van Munster (2007) argue, Beck (1992) tends to reduce complex and multiple forms of risk to a single type of risk derived from the transformation of industrial society into what he calls reflexive modernization. The theories of biopolitics and governmentality that I am drawing on here tend to approach risk as a flexible technique for governing (bodies, populations, etc.) (Aradau and Van Munster 2007).

implicitly racialized, sexualized, and economic criteria. For instance, in November of 2006 it was revealed that the Department of Homeland Security had applied a so-called Automated Targeting System (ATS) over the previous four years without public disclosure to millions of American and international travelers transiting through the United States. The ATS assigns computer-generated scores to travelers that assess the level of risk that they pose based on the monitoring of their “travel records, including where they are from, how they paid for tickets, their motor vehicle records, past one-way travel, seating preference and what kind of meals they ordered.”<sup>32</sup> Another key point in the Canada-US Smart Border Accord is the Passenger Information Sharing System, which constitutes an agreement between the two states to share information about airline travelers, including a “calculated risk score.” Many of the racialized impacts of risk assessment and profiling practices are enacted through this monitoring and profiling of travel routes and practices. Another key risk assessment technique is enacted through the articulation of nationality with race, with the targeting of specific nationalities from countries deemed high risk—as with the NSEERS special registration program. Additionally, refugee claimants who are suspected of being economic migrants and therefore bogus refugees because they come from economically precarious contexts increasingly face detention and eventual deportation.

Yet these practices of risk assessment also have an undeniably affective dimension. Increasingly, behavior or movements that are deemed strange or unusual in airports or airplanes are targeted as “high risk.” The reading of threat potentials off of moving bodies by governmental officials is never neutral, particularly in a post-9/11 climate where affects of fear and threat have been strongly attached to Muslim/Arab/South

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<sup>32</sup> Michael J. Sniffen. “Feds Rate Travelers for Terrorism.” *The Washington Post*. November 30, 2006.

Asian/refugee bodies. This reading of embodied risk also pertains to bodies that are deemed potential health risks; that are sexualized as possible sex workers or trafficked bodies; that are criminalized through long-standing practices of racialization (the black Jamaican or Colombian read as potential drug trafficker, the African refugee claimant, etc.). With the implementation of the STCA, this suspicion is further generalized to all refugee claimants transiting to Canada through the United States, who are presumptively deemed inauthentic refugees engaging in “asylum shopping” and are thereby automatically denied the possibility of pursuing a claim in Canada. In this way, “risky” bodies are subjected to the differential, repressive face of the smart border and its production of increasingly precarious, illegalized movements.

What meanings and what kinds of practices of “protection” are produced in relation to the risky bodies of the smart border regime emergent from the *Immigration and Refugee Protection Act* and the STCA? What work do promises of protection perform in the biopolitics of migration that have emerged post-9/11? Based on long-standing debates in the feminist movement regarding liberal feminist appeals to state protection for women, feminists have developed a significant body of critique with regards to promises of protection by the state that are relevant here (Stabile and Rentschler 2005; Young 2003; Namaste and Sitara 2005; Cossman et al. 1997). Stabile and Rentschler (2005) argue that the social processes through which security issues become problematized are intrinsically gendered and racialized, that the socially dominant articulations of fear tend to be shaped from white, middle-class, heterosexual, male social positions that claim a univocal, universal consensus on that which is to be feared (xii). Iris Marion Young (2003) refers to the logic of masculinist protection that underwrites the security state as what she calls a “male protection racket.” Stabile and Rentschler cite the ethnographic work of



Fine and Weiss (1998) on the gendered and racial codings of everyday peoples' articulation of fear in the context of the United States. The latter show significant social differentials between the predominant expressions of fear in racialized communities that tend to be directed towards policing and enforcement agencies of the state, and those of white men that largely focus on street crime attributed to racialized men. These social differentials in racialized and sexualized codings of fear are particularly relevant to the governmentality of fear that has been put into place post-9/11, given that the biopolitical codings of threats to the population implemented in the IRPA and STCA have been both broad and anything but neutral.<sup>33</sup>

It is important to note here the different ways that protection has been framed and produced in the governmentalization of the two media events that have been the main preoccupation of this dissertation. The media event around the Fujian Chinese boat landings and subsequent governmentalization of trafficking policies framed the refugee claimants as both objects ("human cargo") and passive victims of traffickers (snakeheads) in need of protection, at the same time that the Canadian nation was also framed as requiring protection from the same migrants and transnational criminal gangs abusing its generosity. The media event around 9/11 and the security policies enacted in its wake articulated a much more dichotomous divide between an innocent Canadian population requiring protection and the malevolent terrorist cells infiltrating and threatening its well-being. Yet, as Nandita Sharma (2005) and Connie Oxford (2005) have shown with respect to discourses of human trafficking, particularly sex trafficking, the seemingly

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<sup>33</sup> I am aware that speaking in terms of the social codings of fear could be read as drawing this analysis into the realm of emotional response. This is a juncture at which it is useful to emphasize the labile and contagious aspects of fear in its capacity to move across the affect/emotion divide. Stabile and Rentschler's analysis takes part in a strong tradition of feminist analyses of fear as a social response, which is useful in analyzing the circulation of fear from an affective force to an embodied response with important socially differential impacts.

benevolent extension of state protection through trafficking policies involves the powerful social regulation and silencing of the migration self-narratives of “trafficking victims” in a manner that “ventriloquize[s] their own needs and fears for the purposes of social control” (Stabile and Rentschler 2005, xiv). The agency and the protection needs of trafficking “victims” (particularly when they are women) are taken out of the context and control of their own modes of self-narration<sup>34</sup> and re-narrated according to the border-enforcement prerogatives of the state, in such a way that protection often blends into enforcement measures (detention, etc.) (Sharma 2005, 94). The differential inflections and operations of “protection” in these two events are tied to the differently gendered scriptings of protection in each case. While governmental protection in response to terrorism is masculinized as a securitized response to a violent, racialized masculine threat, governmental protection for trafficked migrants is feminized in more equivocal, oscillating terms that render them, on the one hand, as public health and abusive threats to the integrity of the nation’s borders and sanctioned labour market, and on the other, as abject, passive victims that must nonetheless be controlled through no less enforcement-based forms of “protection.”

To wit, two years after the fact in May of 2007,<sup>35</sup> the Conservative government resurrected the “strippergate” affair of the previous Liberal government by tabling Bill C-57, the first amendment to the IRPA since its implementation. The bill does not address any of the controversies around the Refugee Appeal division or the treatment of security detainees, but instead strengthens the powers of immigration officers to deny temporary

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<sup>34</sup> Modes of self-narration that often counter and reject the “trafficked victim” designation and simply refer to strategies of migration (Sharma 2005, 96, 103). See Andrijasevic (2004) for more on sex work as a strategy of migration.

<sup>35</sup> As this thesis was being finalized.

work permits in order to prevent “vulnerable foreign workers, including strippers, from being exploited or abused” (CIC 2007). The amendment proposes to enhance the discretionary authority of the Minister of Citizenship and Immigration to instruct officers to deny migrants seeking entry to the country as temporary workers “if they believe there is a strong possibility of exploitation,” “or the possibility of becoming victims of human trafficking” according to CIC Minister Diane Finley. In introducing the amendment, Finley made several references to the Sgro scandal, noting that “the good old days of the Liberal stripper-gate will be a thing of the past.”<sup>36</sup> Framed in strongly moralistic terms, the bill is presented as a measure to “protect” foreign workers from sexual exploitation, humiliating or degrading treatment, abuse, and harassment. The sexualized protection offered to (predominantly women) migrants in Bill C-57 effectively seeks to protect them by keeping them out of the country.

Furthermore, the protection promised in the smart border migration regime serves to governmentalize the power-laden affects of fear and insecurity into state policies and practices, of “design[ing] fear into our city spaces and militarized state borders” (Stabile and Rentschler 2005, xiii). This governmentalization of insecurity (Bigo 2002), of the affective climate produced through the monstrous biopolitics of the media events discussed throughout these pages, has had drastic effects in its intensification of the state racism differentially targeting migrant bodies. Michelle Lowry has argued that the post-9/11 national security focus of the IRPA and the STCA has served in practice to produce heightened insecurity for migrants and refugees in Canada. The effects of this governmentally-produced insecurity disproportionately impacts gendered, classed, and raced asylum seekers (Lowry 2002, 28).

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<sup>36</sup> *The Sudbury Star*. “Bill has politics written all over it.” May 18, 2007.

Ultimately, the IRPA and the STCA operationalize a highly equivocal (some would say cynical) notion of protection and safety, in which an idealistic humanitarian rhetoric of refugee protection is employed to implement increasingly repressive measures in its name. Protection for refugees comes to mean increasing detention, interdiction, and deportation for refugee claimants, while refugee protection measures are increasingly and intrinsically pitted against a securitized conception of protection for the population. This expanding *lacuna* between the promises and practices of protection in the current securitized liberal democratic biopolitics of migration are tied to what Rada Ivekovic calls *la désémantisation*, the degradation of political language and discourse on a global scale that has been enacted with the war on terror (Ivekovic 2006; see also Butler 2004b). In this increasingly repressive biopolitics of post-9/11 protection, refugees have come out on the losing end of the biopolitical divide as presumed and generalized threats to the population. This exposes refugee and migrant bodies to what Mbembe (2003) and Osuri (2006) might call a renewed necropolitics of protection that inscribes itself in a longer trajectory of settler colonial violence directed at racialized and indigenous bodies by the Canadian nation-state.

## **5 Not the Exception but the Rule: The Post-9/11 Biopolitics of Migration**

Based on the increasingly pervasive, some might say Orwellian, governmentality of protection that has emerged from the securitized smart border regime, I want to close by drawing out some of the implications of the rearticulated biopolitics produced through the media event around 9/11 and the policy shifts that resulted from the strategic inscription of Canadian immigration policy as a major front in the “war on terror.” To begin with, the entrenchment of the citizen/non-citizen divide and the normalization of

exceptional measures targeting non-citizens have made for a heightened biopolitics of status. Secondly, the intensified problematization of security that has taken place since 9/11 frames national (and often global) security as an intrinsic predicament of immigration and the movement of migrant bodies. Thirdly, the neoliberal dimensions of these biopolitics have been presented as a meritocratic search for the world's "best and the brightest," producing new forms of im/migrant un/desirability. The virtualized forms of governmentality that have resulted are increasingly focused on the regulation of potentials, most notably through interdiction and security policies that operate on the basis of risk assessment and profiling practices. The bodily inscriptions and effects of these biopolitics increasingly rely on biometrics, detention, and deportation. And finally, a central preoccupation throughout this text has been the critical role of media biopower and the way it has been mobilized to produce states of exception and subsequent normalization through an affective politic of the media event.

To begin with, the *biopolitics of status* defining the citizen/non-citizen demarcation as a key dividing point in the population has been heightened with the IRPA's production of the "foreign national" as a discursive category that intensifies the states of exception to which non-citizens are subjected through the security and detention policies discussed earlier in the chapter. This biopolitics of status becomes key to the governmentality of the population and its regulation of labour, sexuality, race and ethnicity (often collapsed into nationality in these policies) in ways that target and subject non-citizen migrant bodies to heightened surveillance, repressive/control measures, and precarity.

In turn, this biopolitical citizen/non-citizen divide produced through what Ceric (2006) calls the contingent charter and its resulting differential rights regime is inscribed in a wider settler colonial biopolitics of status based on long-standing and newly shifting

forms of state racism. On the one hand, the biopolitics of aboriginal status in Canada has historically constituted another crucial dividing line in the population that continues to subject indigenous peoples to the differential and repressive face of settler colonial necropower by the Canadian state and society. This is a significant and complex topic in and of itself, one that can only be gestured at here by noting, for instance, the ongoing challenges and routine denial of services many urban aboriginal peoples face in seeking access to basic health services in city hospitals; the repercussions and struggles that have resulted from the loss of status faced by First Nations women who married non-natives prior to 1985; and the denial of status to Métis and aboriginal peoples of mixed heritage as a result of the sexualized nature of the settler colonial laws governing aboriginal status (see, for instance, Obomsawin 2006).

On the other hand, we are currently witnessing a normalization and generalization of the exceptional security measures that have long been applied to non-citizens (and extended to Permanent Residents by the IRPA) in the form of an increasing export and application of these exceptional provisions to citizens. As Macklin shows, with the passage of the *Anti-Terrorism Act*, the search for the “enemy within” after 9/11 has led to the export of aspects of these immigration security measures to domestic criminal law. The result is a situation in which the exceptional measures that have long been directed at non-citizens are now being directed at citizens for the first time (Macklin 2002, 394).<sup>37</sup> It is perhaps unsurprising that such generalized exceptional measures in the *Anti-Terrorism Act* are now being invoked to target the specter of “home grown” terror, which

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<sup>37</sup> Macklin shows how outcry against the *Anti-Terrorism Act* has focused on the “imprecision of the definition of terrorism (s. 83.01(1)(b)), non-disclosure of information to an accused (s.38.06) and warrantless, preventive detention (s. 83.3(4)),” procedures that have been long been standard fare for non-citizens (Macklin 2002, 393).

emerged most spectacularly with the mediatization of the June 2006 arrests of an alleged “terror ring” of 17 Canadian Muslim youth and young men in Toronto.<sup>38</sup>

Perhaps the most clear-cut and obvious repercussion of this securitized biopolitics of migration is the intensified *problematization of security as an immigration problem* (and vice versa). Okafor and Okoronkwo (2003) summarize this nicely when they speak of the current approach to security that holds forth the promise of a “fortress Canada that is secure and terrorist-proof largely because of what Canada does or does not do with its immigration/refugee law and policy” (40). The almost exclusive resort to such immigration remedies as deportation as a means to securitize the nation (Amnesty International 2005, 4) points to the differential and disproportionate targeting of non-citizen migrant bodies as the source of a global sense of insecurity that many have argued has its roots in much broader international relations shaped by the structural inequities of empire and neoliberal capitalism (Ceric 2006, 16-17).

In the context of the governmental framing of migrant bodies on the move as implicit, potential threats to the national security of the population, Abdelmalek Sayad (1999) has written about the public rush to blame immigration for national insecurity, to externalize this sense of threat through what he calls “la double peine d’immigration.”<sup>39</sup> Any *délit* or offense committed by an immigrant or refugee is compounded by what is perceived in the logics of national closure to be the latent *offense* of immigration itself, as ultimately evidenced by the very existence of the penalty of deportation. While the

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<sup>38</sup> For more on the media’s treatment of the arrests, see: Robert Fisk. “How racism has invaded Canada: What is the term ‘brown-skinned’ doing on the front page of a major Canadian daily?” *The Independent*, June 10, 2006. <http://news.independent.co.uk/world/fisk/article754394.ece> (accessed June 2006). Sumayya Kassamali and Usamah Ahmad. “Wounded Sentiments: Multiculturalism, the “Toronto 17”, and the National Imaginary.” *No One Is Illegal Toronto* (website). <http://toronto.nooneisillegal.org/node/416> (accessed June 2006).

<sup>39</sup> The double penalty or (criminal) sentence of immigration.

association of immigration and refugee asylum with security and criminality has long been a staple of far right discourses, this newer biopolitical articulation of migration and security forged through the media events around the Fujian Chinese boat landings and 9/11 has come to completely infiltrate mainstream political discourses of migration in Canada. The construction of migration, and particularly refugees, as implicit threats to the security of the population has become so ingrained as to be rendered political truisms in post-9/11 media culture. Yet given the differential rights regimes that non-citizens are subjected to with the denial of due process that accompanies security-related charges, we might recast Sayad's analysis to speak of a *triple peine d'immigration* (triple penalty of immigration) facing racialized non-citizens. Non-citizen migrants who face security-related suspicion are not just exposed to a double penalty that augments the usual criminal sentences for citizens with the additional penalty of deportation. The exceptional nature of security measures that target non-citizens, denying them due process even in the face of potential rendition to torture, adds a third layer of disparity for those non-citizens who would otherwise face minimum due process guarantees were they charged under the standard (non-terrorism related) provisions of the Criminal Code.<sup>40</sup>

All of this suggests the extent to which security, along with criminality and enforcement measures, have become a central means of regulating immigrant and refugee selection and ensuring the governmental production of desirable/deserving immigrants in the post-9/11 biopolitics of migration in Canada. As Aiken (2001) argues, a

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<sup>40</sup> In noting the biopolitical cleavage between security provisions (that resort to immigration remedies) and the lesser penalties and due process formally guaranteed in the standard provisions of the Criminal Code, I am not necessarily advocating a recourse to the Criminal Code over immigration security provisions for migrants suspected of posing a national security threat, as some refugee advocates have proposed (Aiken 2001). See Ceric (2006) for a useful alternative proposition for the delinking of security and citizenship status that goes beyond what she calls the prosecution/deportation versus criminal/immigration law dichotomy.



consideration of recent deportation practices shows that immigration security measures are no longer strictly focused upon nor particularly effective at expelling those deemed threats to the nation. Instead, they have become “one tool, in an increasingly sophisticated arsenal, to contain and manage refugee admissions” (55). Similarly, through an analysis of immigration-appeal hearings involving the deportation of non-citizens based on criminality, Wendy Chan (2005) argues that deportation has become a key tool in a moralizing governmental regulation of criminalized migrants. Chan shows how deportation hearings are used to morally differentiate between reformed or “deserving” and “undeserving” immigrants, by granting stay with strict conditions to the former while imposing deportation on the latter. In this way, sovereign enforcement measures (detention, deportation) are invoked in post-sovereign forms of biopolitical power for the moral and political regulation of the overall immigration system and the governmental formation of worthy immigrant subjects. According to Chan, deportation practices are as much about “differential exclusion as they are about enforced assimilation” of immigrants, in which the “ongoing regulation and surveillance of immigrants and the threat of deportation ensures their compliance” (Chan 2005, 153). This intensified recourse to security and criminal enforcement as a means of regulating Canadian immigration has key implications for the governmental production and formation of what Chan calls compliant, “deserving” immigrants.

A third feature of the current biopolitics of migration in Canada concerns the key role that a *neoliberal governmentality of the “best and the brightest”* serves in *the production of the un/desirable immigrant* as a legitimizing and structuring device for immigrant selection. The governmental function that this search for the “talent elite” of the neoliberal global economy plays in the biopolitical production of un/desirability, for the “mythical

meritocracy” that can rescue and fuel Canadian economic growth, serves a crucial role in the monitoring and exclusionary functions of the entire selection and enforcement system, particularly for im/migrants who are determined to be less than desirable (Bloice 2006). The desirable immigrant, the “search for the perfect immigrant” (as one *Globe and Mail* commentary recently put it), becomes increasingly elusive, phantasmic, mirage-like. But it plays a key role in the governance of desirability that haunts the formation of immigrant subjects as part of the moral regulation and discipline that im/migrants seeking entry to the nation are subjected to.

In these biopolitical calculations that shape the search for the “best and the brightest,” desirable immigrants are primarily framed as human resources in a neoliberal economic calculus (Dorais 2006). Family class immigration serves as a stabilizing anchor to this economic logic and a sexualized securer of desirable population growth, even though the racialized contours of this imagined future population render it an unstable, volatile, and ambivalent category in the schema of desirable immigration (as I showed in Chapter 5) (Arat-Koc 1999). The place of refugee class immigration in this calculus of desirability—currently framed primarily as a “burden”—is much less clear. The Conservative government that entered power in 2006 has only intensified the push for economic immigration, announcing a major increase in their desired annual target in the number of economic immigrants, while family class immigration has been increased very modestly, and refugee class immigration faces an even greater decrease (from 32,800–40,300 in 2006 to 25,900–30,800 in 2007) (CIC 2006).

Significantly, the neoliberal corollary to the biopolitics of status (citizens versus non-citizens) discussed earlier is the biopolitical cleavage drawn between desirable economic immigrants, temporary workers, and undocumented migrant laborers in the

underground economy. As Nandita Sharma (2006) has shown, the Canadian economy has become increasingly reliant on temporary and undocumented labour, particularly in such sectors as the construction, restaurant, and hotel industries. In this way, the flipside of this production of desirability of the “best and the brightest” is the biopolitical production of precarity for temporary workers and undocumented laborers on which the Canadian economy depends.

A related conclusion that can be drawn is the extent to which this migration security regime serves to screen and regulate migration as part of a larger biopolitical project of securing neoliberal capitalist economic growth for the population. The intensified securitizing of immigration increasingly operates as a precarity machine, producing precarious illegalized movements and the undocumented migrant populations that the Canadian economy is so dependent upon. Sharma (2006) shows that more than three-quarters of im/migrant workers who entered Canada over the past 30 years did so under conditions of temporary, unfree and precarious labour (110). Based on the neoliberal biopolitics of Canadian economic growth that requires precarious labour, this securitized immigration policy renders shifting migrant populations precarious or illegal through a range of techniques. At the same time, it also targets these migrant workers as threats to the population for these very reasons. In other words, the very governmental mechanisms that push migrant populations into precarity for the “good” of the population are taken as the grounds for which they become targeted as threats to the population.

For instance, recent attempts to pressure the Canadian government to offer a blanket amnesty or some form of regularization program to the estimated 200,000-500,000 undocumented migrants working in Canada’s underground economy have been

roundly rejected by successive immigration ministers and governments.<sup>41</sup> CIC argued in October 2006 that “allowing illegal workers to stay would likely ‘encourage more illegal immigration’”<sup>42</sup> and, according to then Citizenship and Immigration Minister Monte Solberg, damage relations with the United States.<sup>43</sup> This despite the fact that such governmental policies as the Safe Third Country Agreement do just that (i.e. produce greater illegalized migration). In March 2006, amidst protests by the Portugese-Canadian community, the Conservative government very publicly stepped up the deportation of undocumented workers, deporting over two dozen Portugese undocumented workers as part of a larger targeting of undocumented Portugese and Latin American migrants working in the construction industry.<sup>44</sup>

Another set of communities produced as “migrant” through this precarity machine are the so-called “limbo” or moratorium cases—migrants who are refused refugee protection because they come from countries in which there is generalized (rather than individually-targeted) violence, but who are able to stay temporarily while their countries remain on a CIC-produced moratorium list of countries considered too violent or dangerous to deport people to. During their stay in Canada, they receive social security numbers that begin with the number “9” (as do other temporary non-status populations), identifying them to employers as non-status. Once the Canadian

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<sup>41</sup> However, in May of 2007, a Commons immigration committee voted unanimously to hold hearings into the estimated 200,000 undocumented “foreign skilled workers,” as a first step in considering some form of regularization program. Immigration Minister Diane Finley responded to the move by noting that the government did not want to be unfair by “...allow[ing] some to jump the queue while others who follow the rules have to wait in line.” Juliet O’Neill. “Commons committee to hold hearings on deporting of illegal skilled workers.” *Ottawa Citizen*. May 2, 2007.

<sup>42</sup> Marina Jimenez. “Ottawa rules out amnesty for 200,000 illegal workers.” *The Globe and Mail*. October 27, 2006.

<sup>43</sup> Andrew Mayeda. “Integrating illegal immigrants could harm U.S. relations, Solberg warns.” *Ottawa Citizen*. November 8, 2006.

<sup>44</sup> Ibid.

government decides to remove a country from the moratorium list, those migrant communities are immediately subject to deportation, regardless of their length of stay in Canada (many reaching ten years or longer). This was the case in 2002 when, despite an ongoing civil war, the government removed Algeria from the list of moratorium countries upon concluding a series of business agreements with the Algerian government, rendering over 1,000 Algerian migrants in Canada subject to deportation overnight. Much of the social movement and activist organizing by and in alliance with non-status migrant communities since 9/11—such as the Comité d'action des sans-statut algériens (CASSA) that formed in response—has focused on the role of immigration and security policies in producing a precarity machine and the effects for those rendered precarious by such policies. In effect, such movements highlight how immigration security measures and escalating practices of deportation serve a de facto role in producing a veiled temporary guest worker policy that ensures that a circulating, renewable population of precarious migrants is made available to the Canadian economy.

A fourth feature of post-9/11 biopolitics is the extent to which immigration policies governing the smart border regime operate through the *governance of potentials and the production of virtualized effects*. This regulation of potentials and the virtual exclusions of immigration policy allow contemporary policy discourses of Canadian immigration to maintain a celebratory mythos of inclusivity that deny and erase their own racialized appeals and effects, while at the same time operating along shifting lines of racialization and exclusion in practice. This is true for all the major policy shifts and trajectories implemented through the IRPA and the STCA, particularly for security measures, interdiction, the governance of the border through an increased racialization of risk, and the overall enhancement of preventative and pre-emptive measures. Indeed, the

escalation in deportation and detention practices since 9/11 has been legitimized through the reinscription of these practices as preventative measures necessary to contain potential security risks, flight risks, and health risks...risky bodies on the move that must be detained and contained by the repressive arsenal of the state *just in case*. The increasingly preemptory nature of Canadian immigration policy, its focus on the regulation of potentials, is everywhere evident in the language of law and policy—*reasonable grounds to believe, balance of probabilities, flight risk, likely to endanger public health, membership in a group*, the undefined nature of “terrorism” or “danger to the security of Canada.”

In this way, the recent biopolitics of security target and act upon *potential* rather than actual or concrete threats—*potential* threats that become affectively attached to the risky bodies of the racialized men (predominantly) deemed terrorist. In the landmark 2002 Suresh decision by the Supreme Court that opened the door to deportation to torture based on a “balance of risks,” the Court argued in its decision that the lack of a legal definition for terrorism was not unconstitutionally vague. “To insist on direct proof of a specific threat to Canada as the test for ‘danger to the security of Canada’ is to set the bar too high...There must be a real and serious *possibility* of adverse affect to Canada. But the threat need not be direct” (emphasis added).<sup>45</sup> As Aiken (2001) has noted, this lack of a legal definition for *terrorism* or *danger to the security of Canada* opens the door to a whole host of associations and insinuations that need no evidentiary substantiation or any form of public disclosure or scrutiny. These associations and potentials are put into place, circulated and amplified on a profoundly affective level, through the news media events that have been the focal points of this dissertation. The affective facts formed through

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<sup>45</sup> Cited in Ceric 2006, 4. *Manickavasagam Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002], SCC 1, [2002] 1 S.C.R. 3.

these media events, the associations of fear and threat that get attached to racialized migrant bodies through these media spirals, carry a particular legal effectivity in the implementation of immigration security measures, due precisely to their legal vagueness and exceptionality.

In this way, the practice of racialized profiling through the governmental targeting of risky bodies constitutes a key technique in the biopolitical regulation of potential threats. Building a profile involves a process of conjecture and deduction, invoking traits and criteria that are often deemed to be relevant because of their affective resonance with existing preconceptions. This profile of “terror” is a profoundly racialized one, invoking the traits of presumed Middle Eastern/Arab/South Asian masculine bodies—bodies that may be connected to other “suspect” bodies in purely incidental ways, bodies that may or may not have traveled to geographic zones deemed to be “terrorist havens”—in order to target them with the exceptional practices of biopolitical security. The shifting phantom cellular body of the terror cell circulated through the 9/11 media event intensified the governmental practice of profiling as a response, producing a climate in which anyone of a given profile could be seen to constitute a potential threat. The affective climate that resulted bolstered the sense of urgency, of a governmental imperative to act on these potential threats through practices of profiling and targeting.

A key dimension of the biopolitical role that heightened interdiction policies play in this rearticulated security regime relates to the way they act on *potential* movements and produce *virtualized* effects. Interdiction policies are formulated to impinge upon and regulate the capacity of specific populations to embark upon legitimized forms of movement. The virtual workings of interdiction policies operate through a preemptive and deterrent logic, seeking to regulate, deter and limit potential movements and border-

crossings of people in a pre-emptive manner. As Cr  peau and Nakache show, “thirty-two percent of Canada’s interceptions in 2000 were made in the migrant’s country of origin or in countries that lack a refugee protection system comparable to Canada’s (Cr  peau and Nakache 2006, 13). Interdiction policies also operate through transportation carrier sanctions and directives to transportation carriers to redirect routes of transport in specified ways.<sup>46</sup> By couching the language of policy in terms of administratively permissible forms of movement and travel, the racialized effects of limiting specific populations with respect to the movements they undertake from their lands of origin can remain unnamed and unspecified.

Refugee activists and advocates constantly invoke the virtual nature of these effects, using a vocabulary of *invisibility* to call attention to the virtualized effects that interdiction policies produce and operate through. The Canadian Council for Refugees report on the STCA, *Closing the Front Door*, for instance, draws particular attention to how the externalization of interdiction measures reinforces their invisibility and how this further limits the potential role of the media in visibilizing or actualizing the effects of these measures:

The effect of interdiction is to render the human rights violations suffered by asylum seekers invisible in the country of intended asylum, since they never arrive. Thus, the impact of safe third is largely invisible: there are no media reports about individuals being deported to the threat of death or torture; citizens do not lobby politicians on behalf of families who never make it here...It is no exaggeration to describe the safe third country agreement as a “silent killer.” (CCR 2005, ii)

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<sup>46</sup> The massive increase in transportation carrier sanctions and directives of recent years connects to a longer history in Canada. Kazimi’s *Continuous Journey* shows how such a directive was issued in 1914 in tandem with the Continuous Journey regulation that shut down all direct, continuous means of transport from the Indian subcontinent. Kazimi shows how the Canadian government forced Canadian Pacific to shut down the only direct transport line between India and Canada at the same time that it issued the Continuous Journey Regulation.



In this way, the facilitative function of the biopolitical smart border is produced in part through interdiction measures that virtualize and externalize its repressive functions. Even prior to the passage of the STCA, refugee claims fell 41% between 2001 and 2004 due to enhanced interdiction measures.<sup>47</sup> With the implementation of the STCA, refugee claims at the Canada-US border dropped by 55% between 2004 and 2005, making 2005 the year with the lowest number of refugee claims since the mid-1980s (prior to the creation of the Immigration and Refugee Board) (CCR 2006).<sup>48</sup>

A fifth key feature of the post-9/11 biopolitics of migration relates to the increasing *bodily inscriptions of the repressive and control functions of the smart border*, the heightening technologies of control inscribed and read off of the body in governmental efforts to track and contain migrant bodies on the move. These range from the routine use of biometric data in processing refugee and immigration applications (fingerprinting), to multiple initiatives being tested and implemented to introduce enhanced biometric technologies into governmental documents and border control practices. Biometrics are intimately bound up with profiling practices, in which bodily markers are read and encoded as trackers and indicators of *potential* acts, risks, and threats.

One of the first policy changes initiated by CIC after 9/11 was to move to introduce the “Maple Leaf” Permanent Resident Card, a card that was instituted in 2003 with a “biometric ready” digital strip. At the time, CIC Minister Denis Coderre touted the Permanent Resident Card as the model for a new biometric national identity card for all Canadian citizens, but was greeted by rejection from a Parliamentary committee

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<sup>47</sup> Heather Lash. “Who’s Abusing Whom?” FCJ Refugee Centre Op-ed, June 2005 (accessed June 2005). <http://www.fcjsisters.ca/RefugeeCentre/docs/Archives/Whosabusingwhom.html>.

<sup>48</sup> Nicholas Keung. “Asylum Bids blocked at US border: Study Shows 55% drop in claimants.” *Toronto Star*. November 17, 2006.

concerned with the risk to citizens' privacy.<sup>49</sup> The national identity card has thereby only been instituted for immigrants with permanent resident status.

Biometrics were a key item in the *Smart Border Accord*, in which Canada and the United States agreed to develop compatible, interoperable biometric standards, technologies, and programs. Since the signing of the *Smart Border Accord*, several pilot biometric programs that use iris scans as identifying biometric data have been put into place, including the CANPASS and NEXUS air, marine, and land family of programs. They are designed to expedite border crossings for "pre-approved, low-risk travelers" at select border crossing points. According to the Canadian Border Services Agency, "the NEXUS programs allow Canadian and United States customs and immigration authorities to concentrate their efforts on potentially high-risk travelers and goods, thereby upholding security and protection standards at the border" (CBSA 2006). In other words, the risk that migrant bodies are deemed to pose is understood to be trackable and encoded in the biological data of bodies on the move.

In this way, biometrics are playing an increasing role in the control functions of the smart border, in which the facilitative/restrictive lanes of the smart border *à plusieurs vitesses* are increasingly accessed and monitored through technologies of bodily identification, from fingerprinting to iris scans to facial recognition technologies. The so-called *smartness* of the smart border is tied to this technological targeting and monitoring of migrant bodies, scanning and encoding the biological matter of moving bodies for traces that identify them as potential high risk threats, or as valuable entrepreneurial agents whose movements are necessary for the trade and traffic of the global economy.

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<sup>49</sup> CBC.CA. "National ID cards." December 7, 2004.

<http://www.cbc.ca/news/background/airportsecurity/idcards.html> (accessed February 2007).

This encoding of biological data in identity documents is part of a larger governmental project promoted by key segments of the political and business establishment while arousing vitriolic opposition in others. Yet it is significant that the front on which it has made the most headway is in matters of immigration and border security.

As I have indicated, biometrics are only the most cutting edge of a range of governmental modes of tracking, screening, and containment of migrant bodies. The medical examinations that all immigrants and refugee claimants must pass through as part of the screening for potential dangers to public health or excessive burdens to the health system is one of the most long-standing. Out of fear of so-called “paper families,” DNA testing is often used to attempt to substantiate biological family ties for family class migrants from countries with different, more extended family structures (a practice which disproportionately targets African migrants) (OCASI 2005). Other technologies are employed as bodily markers and trackers to monitor and contain the movements of migrant bodies. GPS tracking-bracelets are commonly imposed as part of the temporary release conditions for security certificate detainees and other migrants detained for immigration-related reasons. The sharp increases in detentions and deportations since 2001 are the starkest techniques in the material confinement and expulsion of migrant bodies. Each of these bodily inscriptions of the repressive control functions of the smart border operationalize the *bio-* of these biopolitics in a very literal manner.

A final feature of the post-9/11 biopolitics of migration that I want to close with—a dimension that has been a core preoccupation of this thesis—is the crucial role of *media biopower*, particularly the affective power of news media events, in the governmentality of Canadian immigration policy. In the media-saturated climate that sets the contemporary scene of these biopolitics, the news media have come to constitute, not just a medium of

influence or a fifth estate adjunct to governmental and political power, but critical nodal points in the governmentality of migration in and of themselves. As many government bureaucrats, right wing commentators, and migrant/refugee advocates and activists would attest, the shaping and regulation of news media events is crucial to its governmental and policy outcomes, to the potentials and limits that news media amplification produces in the governmental outcome of such events. The size and power of the Communications Branch of CIC further bears this out. I want to conclude by sketching out some closing implications of the biopower of news media events at this juncture. These include the role that these affectively volatile media events play in the biopolitical constitution of states of exception and their normalization with respect to immigration policies; their implications for the suspension of due process with respect to migrants targeted by these news events; and the perception politics and public relations functions that inform the repressive face of these border/migration policies.

## **6 Concluding Comments on Media Biopower and the Governmentality of Canadian Immigration**

This thesis has sought to show the extent and process through which the affective event produced through the news media around the 1999 Fujian Chinese boat landings and September 11<sup>th</sup>, 2001 led to the introduction of exceptional immigration policy measures that were subsequently normalized as repressive policies in the course of the governmentalization of these events. The affective spirals of outrage, fear, and insecurity generated through these media events created a political climate in which the exceptional suddenly became permissible, whether it was the previously unprecedented mass detention of the Fujianese refugee claimants in 1999, or the proliferation of exceptional

post-9/11 security measures discussed throughout this chapter. Tiziana Terranova has argued that the power of the media is

...not only the power of imposing an ideology...or manipulating the opinion of the majority, but also a biopolitical power, that is, a power of inducing perceptions and organizing the imagination, of establishing a subjective correspondence between images, percepts, affects, and beliefs...It is this field of intensity that is invested by communications biopower (Terranova 2004b, 152).<sup>50</sup>

Indeed, it is in the assemblage of the affects, percepts, and discourses produced through the media events I have considered throughout the course of this thesis—in the affective intensity and *pitch* of these media events—that a climate of exception was produced. This climate of exception was politically recuperated by a shifting alignment of governmental forces (journalists, media commentators, politicians, the security establishment, right wing populist forces). These moments of exception—where previously unthinkable practices became permissible, where exceptional times were suddenly seen to call for exceptional measures—were extended and normalized into a larger governmentalization of insecurity, an entrenchment of extraordinary policies made ordinary. In this affective climate of exception, the biopolitical imperative to protect the life of the population against imminent threats at all costs worked in tandem with a necropower seeking to eliminate those threats by violently targeting their sources. Media and governmental necropower aligned to transform temporary exceptional measures into long-term laws and policies. It is in this escalating post-9/11 transition from exception to normalization that refugee and migrant activists seek to intervene, working to interrupt and redirect the momentum of these events by publicizing the affective and material impacts of these security policies on the migrant bodies and communities they target.

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<sup>50</sup> I understand media biopower as one dimension of Terranova's more general conception of communications biopower (which encompasses but is broader than just the media).

The biopolitical role of the news media events I have considered in producing an ongoing and normalized state of exception has also had serious repercussions on the legal and juridical guarantee of due process for the migrants targeted by these events. In both the 1999 boat landings and the post-9/11 context, the affective climate of exception created by these media events extended in particular to the legal proceedings that the migrants at the center of the media events were subjected to—proceedings that deviated considerably from standard procedural liberal democratic norms of due process. Whereas the Fujianese refugee claimants of 1999 were treated to exceptional mass detention measures and an equally exceptional, expedited claims determination process that resulted in the mass deportation of the vast majority of them, the migrants and permanent residents targeted by post-9/11 security measures have faced the entrenched exceptionality of the security inadmissibility and certificate process that includes secret evidence, *ex parte* hearings, and a lack of disclosure of the charges for which they are being tried.

In the latter case, the immense concentration of discretionary powers governing the security certificate and inadmissibility process (in the hands of the Ministers and Federal Court judges) is augmented by very low standards of proof regarding “reasonableness,” no rules of evidence, and the presumption of *potential* threats. A Federal Court judge decides on the reasonableness of the security certificate based on whether he or she deems there to be *reasonable grounds* to believe that the person is a danger to national security. Given the larger climate of exception in which the most recent security certificates have been implemented, it is crucial to consider the extent to which the scale of the post-9/11 news media event and the affective spiral of insecurity it generated have directly impacted the determination of *reasonableness* that is key to

immigration security measures, both on the part of the governmental officials with the sovereign powers to set them into motion, and on the part of the public's willingness to accept those judgments of reasonableness at face value. This raises important questions about the role of these spectacular news media events in creating the conditions for the denial of due process to migrant non-citizens in Canada.

Much of the affective amplification of threats, suspicion and insinuation within the post-9/11 media event has been produced through the governmental links between the news media and state security agencies. In this convergence of media and governmental profiling of racialized migrants, elements of the news media played a key biopolitical role in amplifying threats and insinuation in the service of a governmental security agenda. The tandem practice of orchestrated media leaks by sources in the RCMP or CSIS and the media's quoting of those unnamed sources produces a self-reinforcing spiral of insinuation, buttressed both by the media's capacity for affective amplification of fear and the larger secrecy governing the immigration security process. Such practices result in a circular governmental loop between news media publicizing unattributed and often unverifiable information from state sources that target migrant bodies as threats, and the filing of such unverifiable news articles by the government according to exceptionally loose rules of evidence in security legal proceedings.

While some might be tempted to read the news media's role in this self-reinforcing loop of governmental suspicion and surveillance according to a classic propaganda model of the media, I have argued that the multiple, complex relations and lines of force that run between the news media and the state in these practices are more aptly rendered through theories of governmentality and biopower. In recent years, for instance, opponents of the security certificate process and the racial profiling of security certificate

detainees have come to mobilize and intervene on the media-state security nexus in ways that challenge and counter the predominant thrust of these news events, particularly by publicizing the impacts of the security certificate process on the detainees themselves. Nevertheless, this media-governmental surveillance continuum has played a crucial role in the post-9/11 profiling and targeting of migrant bodies.

Finally, the acute gap between the discourse of the STCA, with its promises of creating a securitized continental zone of confidence, and the actuality of its effects in forcing increasing numbers of refugee claimants underground and producing larger illegalized, precarious populations in both countries, also indicates the extent to which immigration policies in this new biopolitics of security serve a public relations function in the mediatized battle for public opinion. A prime function of the STCA as an interdiction policy is to reassure and bolster public opinion in the affective climate of fear fomented post-9/11, to produce that intangible affective quality of “confidence” that the porous borders have been sealed. The effects of this interdiction policy in producing a racialized population of undocumented migrants, in creating a more porous, if more precarious border, may even be acknowledged by governmental officials, so long as they remain invisible, operating as media non-events in a non-mediatized zone. The momentary governmental acknowledgements that policies such as the STCA are in fact counter-productive to their own stated goals indicates the extent to which such post-9/11 immigration policies are formulated primarily to respond to, and to reshape, the politics of public perception, in order to regulate what remains virtual and invisible to the media eye. In such a biopolitics of security and safety, the virtual effects of such immigration policies in intensifying the production of illegalized populations are inconsequential to the spectacle of “toughness” and closure to migrants that they are meant to communicate.



The dissuasive dimension of “tough policies” are also intended to serve a public relations function as notices targeting the perceptions of potential migrants themselves, signaling the precarious routes that lie ahead of those migrants motivated or desperate enough to navigate them. It is in the gaps between the official rhetoric and effects of these policies, between the management of perception and the actuality of their impacts (both material and affective), that the counterpolitics of non-status migrants and migrant activist networks intervene.

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**NOBORDER: AUTONOMOUS LINES OF FLIGHT...**


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This thesis has traced a trajectory through the shifting forms of state racism governing Canadian im/migration policy since its inception: from early settler colonialism to the eugenic racism of the turn of the century; from the sexualized biopolitics and the increasingly implicit, virtualized forms of racialized exclusion that emerged with the policy reforms in the 1960s and '70s, to the risky bodies in the securitized biopolitics of today. A major feature of this contemporary biopolitics regards the critical role of such news events as 1999's Summer of the Boats and the post-9/11 "Canadian connection," which have come to constitute key nodes in the rearticulation of governmental policy towards an increasingly exceptional and preemptive securitization of migration. Where this inquiry concludes, new questions emerge.

Although this work has largely focused on dominant governmental forms of state racism and the attempts of biopower to capture and contain im/migrant mobilities, a significant undercurrent has considered some of the lines of flight and outlaw politics generated by those directly targeted by these policies, along with those who oppose their repressive impacts on refugees and non-status peoples (Deleuze 1986; Ono and Sloop 2002). They have ranged from the protests and hunger strikes of the detained Fujianese migrants in 1999, to those of security certificate detainees and their families, to the work of activist initiatives such as DAARE, CASSA, and the People's Commission on

Immigration Security Measures. I want to close by pursuing the path of these lines of flight to explore some of the future lines of research I plan to embark upon.<sup>1</sup>

Given the immense machinery of bureaucratic governmentality that confronts im/migrants seeking entry to the country or facing detention/deportation, the collective assertion of what Partha Chatterjee calls “the rights of the governed” through these outlaw politics is a key path for further consideration (2002). From such a stance, the varied perspectives, aims, and demands of those on the receiving end of this governmentality of migration, those often treated unquestioningly as objects of governance, are central. This is closely related to political perspectives on the “autonomy of migration” that emphasize the strategies of mobility and survival adopted by migrants to bypass and evade the control of migration and border regimes (even at the cost of precarious border-crossings) (Mitropoulos 2006; Moulier-Boutang 2004; Mezzadra and Neilson 2003; Mezzadra 2004). The active practices of mobility exercised by migrants are a critical starting point in such a politics. As Yann Moulier-Boutang argues, “Migration does not mean the action of an isolated, a-social, expelled individual. Its social and subjective measures appear in its independence from the political measures that try to control it” (cited in Schneider 2002). Such a perspective focuses on the diverse ways that migrant agency is exercised, from migrant-led activist mobilizing for migrant justice to the simple (and often not so simple) exercise of what Mezzadra (2004) calls “the right to escape.”

In the intervening years since 9/11, such an autonomous politics has appeared with the emergence of an innovative migrant-led network for migrant and refugee justice in Canada, directly in response to the securitization of migration in the Immigration and

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<sup>1</sup> I hope to pursue these questions as part of my upcoming postdoctoral research.

Refugee Protection Act and Safe Third Country Agreement. Two key events that catalyzed the emergence of this larger network was the formation of the Comité d'action des sans-statut algériens (CASSA) when the moratorium on the deportation of Algerians was lifted in 2002, and the creation of the STATUS coalition in 2001 to call for a universal regularization of non-status workers in Canada (Wright 2003; Lowry and Nyers 2003). They were joined by groups such as the Coalition Justice Adil Charkaoui and Justice Mohamed Harkat protesting the treatment of the five security certificate detainees ("the Secret Trial Five"); the emergence of a Canadian-based No One Is Illegal network (following the one in the UK); Montréal's Coalition against the Deportation of Palestinians; supporters of a number of refused refugees who had taken church sanctuary to avoid deportation; and the Solidarity Across Borders coalition of many of these groups in Montréal (Ahooja et al. 2006; Burman 2006). The emergence of these activist networks in Canada are linked to and strongly influenced by a longer-standing transnational network of movements for non-status migrants and their supporters, such as the noborder network and the vast coalitions of *sans-papiers* in Europe (Balibar et al. 1999).

While there exist a range of political claims and contradictions within these networks, they all share in common a fundamental contestation of the state racism at work in the present securitized migration regime. Many of them also share an outright refusal of the core practices and discourses on which this regime is constructed, from illegality to borders ("no one is illegal," "noborder"), to state-imposed categories of "authentic" refugees and "desirable" immigrants, to the repressive regulation of cross-border movements in the form of interdiction, detention, and deportation. A key element of their analysis is the political recognition of the roots of Canada's immigration system in settler colonialism, and active support for indigenous sovereignty, land claims struggles,

and indigenous peoples fighting deportation. This has included Charlie Wolf Smoke,<sup>2</sup> a Mohawk/Lakota man who was deported to the US in 2003 after calling for the elimination of all artificial North American boundaries, including the Canada-US border, at an immigration hearing. These networks are engaged in a struggle to reframe the current problematization of immigration away from matters of security and illegality, to a new problematization of the impacts of governmental policies that target migrants and indigenous peoples from the perspective of the targeted people themselves.

Significantly, in their mobilizing work to produce a different problematization of the Canadian immigration system, these activist networks strategically engage both the corporate and independent media as crucial dimensions of their organizing practices. In recent years, several activist groups belonging to the Solidarity across Borders network have intervened in the predominant momentum of the news media events considered in this thesis, successfully mobilizing counter-events in the news media around the often hidden deportation practices of the government, as well as the treatment of the five security certificate detainees. At the same time, these networks also vitally contribute to small-scale, experimental sites of independent/tactical media and media art that tend to operate beyond the structures of visibility of the corporate news media (Lovink and Schneider 2003). In so doing, they also participate in a larger transnational network of independent/tactical media—what Mitropoulos (2003; 2004) calls “noborder media”—that play a critical role in the articulation of translocal movements for justice and freedom of movement of im/migrants, refugees and undocumented peoples.

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<sup>2</sup> Charlie Wolf Smoke is a Mohawk/Lakota man who was born on the Ontario side of the Akwesasne reserve, where he never obtained Canadian citizenship. Wolf Smoke also declared at the same immigration hearing that he is neither Canadian nor American. He had returned to Regina to live with his partner and children after spending half of his life in the United States.

Accompanying their contestation of the prevailing discourses of security, illegality and monstrous migrant threats, these noborder initiatives are also engaged in constructing and circulating a different affective repertoire from that of the prevailing politics of racialized, targeted fear. They tactically employ noborder media and political mobilizing to build counter-affects that intervene on and redirect the historically tenacious affective association of immigration with matters of security. These emergent noborder networks are working to construct a new affective politics that affirms freedom of movement for all bodies, the right to escape as well as to stay<sup>3</sup>, and an autonomous politics of migration against the state racism of those who would limit and constrain it.




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<sup>3</sup> The right to escape and to stay, of course, under equitable and just living conditions in all domains (sustenance, health, housing, freedom from systematic violence or persecution). See Mezzadra and Neilson (2003) on the simultaneously non-reducible and indissociable nature of such a project from a wider political opposition to capitalism and empire.

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## **APPENDIX 1: INTERVIEWS CONDUCTED**

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The following interviews were conducted between 2001 and 2007 as part of the research for this dissertation. Ethical research protocols were carefully followed. The research underwent the prescribed university ethics review procedures and received a certification of Ethical Approval for Research from the Communication Studies Research and Ethics Committee at Concordia University. Please note that for reasons of discretion, and with the exception of one interview, the names of the interviewees have been withheld.

Interview with Refugee Lawyer, March 2001. Toronto, ON.

Interview with Immigration Lawyer, April 2001. Montréal, QC.

Interview with DAARE Activist, July 26, 2004. Vancouver, BC.

Interview with DAARE Activist, July 22, 2004. Vancouver, BC.

Interview with Ali Kazimi (Filmmaker). December 12, 2005. Toronto, ON.

Interview with Immigration Lawyer. February 7, 2007. Telephone Interview (Montréal QC – Toronto, ON).

Interview with Refugee Lawyer, February 19, 2007. Telephone Interview (Montréal QC-Vancouver BC).

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## **APPENDIX 2: DAARE'S POLICY RECOMMENDATIONS**

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### **Excerpt from the Report "Movements Across Borders: Chinese Women Migrants In Canada"**

Collectively Authored by Direct Action Against Refugee Exploitation (DAARE)  
Vancouver, British Columbia April 2001

#### **International Measures**

Canada has international responsibilities, as we have ratified the following conventions:

- The International Covenant on Civil and Political Rights.
  - The International Covenant on Economic, Social and Cultural Rights.
  - The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
  - The Convention on the Rights of the Child (CRC).
  - The Slavery Convention (1926).
  - The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956).
- Canada is also a signatory of the UN Declaration on the Elimination of Violence Against Women.
  - Canada should ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
  - Canada should use strategies such as international cooperation and foreign policy to find humane ways to deal with mass migration, rather than resorting to short term reactions to perceived, racialized crises which punish migrants.
  - Canada needs to find a way to address people who suffer because of manmade, economic policies. Poverty is a human rights issue.

#### **National Measures**

- Canada should make the Export Development Corporation accountable for its actions overseas by increasing its transparency through making the Access to Information Act applicable to it.
- Canada's recently proposed immigration policy gives lip service to the contribution that immigrants make towards the Canadian economy, but its emphasis on enforcing borders and detaining asylum seekers only serves to scapegoat the very people whose underpaid labour actually makes this country run. Bill C-11 is a retrograde act which reduces the rights of immigrants and refugees. It has been proposed that Immigration staff be given



much wider discretionary powers, and without monitoring mechanisms, this power can easily be abused.

- In its increased emphasis on enforcement, Canada's Immigration legislation overlooks the needs and experiences of vulnerable, displaced people, including asylum seekers, migrants, women and children. "Harsh immigration laws will only make [migrants] more vulnerable to smugglers and employers, raise the costs of smuggling even higher, and force the smuggling syndicates to grow even more brutal and immune to government powers" (Kwong 7).
- The proposed legislation's recommendation of automatically detaining people who are suspected of being trafficked ignores how imprisonment further inflicts state violence against people for exercising their mobility rights. People come for many valid reasons, and to detain them is to send a message that they are presumed guilty of some kind of crime, when actually, people have the right to seek asylum. The move to penalize anyone who assists people to move for humanitarian reasons only serves to hurt people who are fleeing persecution. Imprisonment is an expensive practice which wastes people's lives and which should not become routine.
- Refugee applicants and migrants do not belong in prisons and are not usually put in prison in Canada. The move to increase detention and deportation is a threat to the "democracy" in which we supposedly live. The grounds for detention should be further limited, not expanded.
- As the Canadian Council of Refugees has pointed out, Bill C-11 does not fulfill Canada's international human rights obligations under the Refugee Convention, the Convention against Torture, and the Convention on the Rights of the Child.
- Bill C-11 proposes a flawed refugee determination system which harms refugees and insults the concept of fair due process. Moreover, the broadening of inadmissibility provisions is an elitist and anti-democratic move.
- The Canadian government should incorporate the recommendations made by groups such as the Coalition for a Just Immigration and Refugee Policy and the Canadian Council of Refugees.
- As well, there are a number of things that can be done to give migrant women a fair chance at survival:

- Offer a humanitarian option to indentured persons to ensure that victims are not further revictimized by the Canadian state nor returned into the vicious cycle of exploitation and violence in their homelands. Having landed status gives people a fighting chance to survive. Criminalizing them only makes the situation worse and increases the pressure to push them underground. Assigning people "temporary status" makes them fearful of deportation and thus vulnerable to being abused and exploited by employers. When Canada defines people as "temporary workers," it creates the conditions under which people become vulnerable to being abused and exploited by employers and others. Permanent status safeguards basic human rights. Cease forcible repatriation of displaced persons.

- Allocate funds which would have been used for detention and deportation towards community-based services such as shelters, counselling, language classes, and training.

- Increase Canada's immigration rate to two or three percent of its population. Increased migration through legal channels alleviates the pressure that coerces people into covert channels.
- Eliminate the class bias in the point system and value the wide variety of labour skills people have to offer. For example, value women's "traditional" work in evaluating prospective immigrants.
- Trafficking needs to be recognized as a Canadian problem. In 1997, Jyoti Sanghera was told by the Vancouver police that there are about 40 bawdy houses which function as massage parlours with 20 to 30 women working in each of them. "The women are all Asian, most have had their passports taken away, they are in the country illegally, they are made to provide sexual services and there is absolutely nothing in place to take care of them in case of violence or abuse." She was told that these women often work under conditions of debt bondage, and have a debt of \$30,000 to \$40,000 which they have to pay to the brokers who brought them over. If there are 40 massage parlours with an average of 20 women in each, you get an idea of the number of women working under mostly invisible and often coercive situations in Vancouver alone. However, the solution is not to criminalize and thus re-victimize trafficked women, but to build support systems for them to immediately escape these horrendous situations.

Any long term solution comes from working together, not from scapegoating the poor. There is no justice as long as wealthy nations deny their responsibility to the people whose undervalued labour and resources enabled that wealth in the first place. The struggle against contemporary forms of imperialism takes many shapes.

Wealthy nations like Canada need to take responsibility for their part in creating the conditions which cause widespread migration in places like China. As the gap between the wealthy and the poor rapidly increases with globalization, many working class people are forced to move in order to survive. People take huge risks in order to survive against all odds, for the systems against them in both the North and the South, the East and the West, work to exploit their cheap, undervalued labour and skills and to silence their attempts to access the basic rights due every person on this earth. It is hypocritical for Canada to support trade liberalization and projects which displace millions of people (such as the Three Gorges Dam on the Yangtze River), and then to incarcerate people who come to our shores, having left their homelands because of economic, environmental, and social devastation.

### **Citation**

Kwong, Peter. *Forbidden Workers*. New York: New Press, 1997.

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### APPENDIX 3: BACKGROUND ON THE SECURITY CERTIFICATE PROCESS IN CANADIAN IMMIGRATION POLICY

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As discussed in Chapter 5, security certificate provisions were first introduced in their current form in the Immigration Act of 1976 (implemented in 1978) and expanded in 1991, while the IRPA significantly expands them even further. In the initial IRPA provisions, security certificates were issued by the Minister of Immigration and the Solicitor-General,<sup>1</sup> then referred to a single judge of the Federal Court of Canada for a determination of “reasonableness.” The process involves secret (*in camera*) hearings without the presence of the accused individual or their lawyer; no adversarial process to test evidence; the immediate, indefinite detention of the accused individual for the duration of the process (which can take several years);<sup>2</sup> the use of secret evidence; no disclosure of precise charges; and relaxed, differential evidentiary standards (Ceric 2006, 1-2). No right of appeal is permitted.

Created as a civilian oversight body for the Canadian Security Intelligence Services (CSIS) at the time of the latter’s creation under the McDonald Commission in 1984, the Security Intelligence Review Committee (SIRC) offered certain procedural safeguards as well as a certain degree of specialized expertise to the security certificate process. This has also been removed with the IRPA’s stripping of the SIRC’s jurisdiction

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<sup>1</sup> With the creation of the Canadian Border Services Agency under the Department of Public Security and Emergency Preparedness in December of 2004 (see section 3.1.1), security certificates are now signed and issued by the new Minister of Public Safety and the Minister of Citizenship and Immigration.

<sup>2</sup> The exception being permanent residents, who are not automatically detained, though most have been. Recently, two security certificate detainees, Adil Charkaoui and Mohamed Harkat, were given interim releases under severe bail conditions (Ceric 2006, 2).

over security certificates for permanent residents, which are now handled by the Federal Court (Ceric 2006, 10-11; Aiken 2001, 65).

It is also important to note that the recent historical trend towards increasingly broad security criteria in the Immigration Act has been challenged by other governmental bodies responsible for matters of national security. Convened in response to the conduct of the RCMP in targeting a range of political groups (from Québécois separatists, and the new left, the Indian movement, to unions) in the 1970s, the MacDonald Commission<sup>3</sup> recommended changes to the security criteria of the Immigration Act of 1978 on the grounds that they were “‘too broad’ and were inconsistent with the definition of ‘threats to the security of Canada’” (Aiken 2001, 62). On the recommendations of the MacDonald Commission, CSIS was created by parliament in 1984 as a new security agency outside of the RCMP through the Canadian Security Intelligence Service Act. The CSIS Act specifically defined security “threats” based on an enumerated list of *actions* (espionage, sabotage, “foreign-influenced” activities that are detrimental to national interests), while the Immigration Act maintained its broad security criteria based on *associations*. While Parliament never followed through on the MacDonald Commission’s recommendation to revise the Immigration Act, Bill C-86 (1993, see Chapter 5) empowered CSIS to carry out the work of identifying possible terrorists according to the new form of security risk it introduced with its new provisions on terrorism. CSIS became the key governmental security body responsible for surveillance of refugee communities targeted as potential security threats, yet it did so by operating along the broader criteria of the Immigration Act rather than the less

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<sup>3</sup> The Commission of Inquiry Concerning Certain Activities of the RCMP chaired by Justice D.C. MacDonald (1977-1981).

preemptory provisions of its own Act (Aiken 2001, 62-63).<sup>4</sup> This has had major repercussions on the refugee communities targeted, as further considered in Chapters 6 and 7.

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<sup>4</sup> Complaints to the SIRC (Security Intelligence Review Committee), created as an oversight body for CSIS, have provided evidence of extensive overstepping of the bounds of its mandate in terms of surveillance, monitoring, and intrusion into the lives of those targeted for security investigations (Aiken 2001, 63).

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**APPENDIX 4: FINDINGS AND RECOMMENDATIONS  
OF THE PEOPLE'S COMMISSION ON  
IMMIGRATION SECURITY MEASURES  
(APRIL 21-23, 2006, MONTRÉAL, QC)**

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**Excerpt from the Final Report of the People's Commission on Immigration Security Measures, Montréal, QC, February 2007**

The image of Canada as a tolerant and inclusive nation is challenged by the experience of many communities in Canada. The often painful stories told at the Public Hearings of the Commission confirmed that many who have arrived in this country seeking peace and security have met instead with persecution and insecurity.

This was not new terrain for the Commissioners, who are all closely connected to communities which have been subjected to racial profiling and other forms of violence legitimized by racism, and who recognize that Canada is, in the first place, built on land violently stolen from indigenous people.

However, the knowledge that was gained during this process, the personal stories that were shared during the Public Hearings, and above all the new networks that were forged, served to renew the resolve and feed the hope of those involved in the project to redouble efforts to, in the words of Ahmad Jaballah, "make Canada the place we wanted to live in".

An important lesson that arose from the process of the People's Commission is that stronger links must be forged between immigrant communities and indigenous people, between established and new racialized communities, and between different ideologies within communities subjected to racial profiling.

### **Racism and national security**

The starting point of any serious attempt to build a society fashioned after the "beautiful dream" of a tolerant and open society with which Ali Sbeiti arrived so hopefully in Canada, is the full recognition of indigenous people as the original inhabitants of Turtle Island. Only after the fundamental fact that Canada is a settler state founded on a genocide and on the violent dispossession of land is understood and after full reparations made, can any progress be made towards the beautiful dream.

It is also crucial to grasp the extent to which Canadian immigration policy, references to liberal values notwithstanding, has from the outset been racialized and guided by economic interests. Though race is no longer an explicit referent in Canadian

immigration policy, racism remains a pervasive element of the Canadian immigration regime, reflecting its centrality to the constitution of our nation and its borders.

The post-9/11 political climate has been one of a constantly manufactured crisis. In this atmosphere of panic, there is a systematic misuse of fear, a fear that names names and points fingers. Suspicion and culpability are used to “manage” the crisis and “secure” “our” safety. Systematic forms of racialized thought, of “race thinking” as Razack calls it, enable immigration policies which establish and justify different forms of exclusion.

The targeting of Arabs, Muslims and Iranians, among others, is part of a larger framework of national security that tends to generalize the perception of these groups as “dangerous”. Many of the testimonies spoke to the devastating impact of living under suspicion. Becoming a target of suspicion functions as proof of guilt, inviting recriminatory actions against those under suspicion. Members of these groups are stigmatized by the media and targeted in the absence of any evidence.

The national security framework creates a culture of fear and insecurity amongst targetted groups, criminalizing, isolating and stigmatizing individuals long after security forces and media turn their attention elsewhere.

#### For popular action:

- Support the popular land defence struggle at Six Nations and all Haudenosaunee Confederacy territories.
- Move beyond the demand to improve *implementation* of national security measures in popular campaigns. Ask the more fundamental questions of whose nation? What constitutes a nation? Who determines its borders; what do they permit and what do they restrict (e.g. free trade vs free movement)? What is security? Whose security?
- Avoid falling into the trap of accepting divisions between “good Muslim” versus “bad Muslim” or “good immigrant” versus “bad immigrant”; build campaigns and popular movements based on full respect for the rights and dignity of everyone without qualification.
- Translate and broadly distribute the Rights Guide produced by CAIRCAN to inform and empower targetted communities.

#### For governments:

- Recognize that Canada is built on stolen land and begin the process of decolonization and reparations.
- Implement a profound shift in domestic policy and foreign relations by addressing social injustices, poverty, oppression, racism and discrimination and adopt this new direction as the principle strategy of the “war on terrorism”.
- Implement a new curriculum in all educational institutions in accordance with this history and reality.
- Prohibit racial, religious and other forms of profiling by policing, security and intelligence officials.

## Due process

The Canadian security and intelligence apparatus, and CSIS and the RCMP in particular, as well as police forces have, through racial profiling, widespread harassment and threats, cultivated a climate of fear among immigrants, refugees and racialized communities. One tool used in those practices is the threat of invoking immigration security measures such as the security certificate. These same agencies have a long history of operations against legitimate social movements and dissident organisations in Canada. Their activities in many instances seek to defend status quo social power relations, rather than to protect public safety.

CSIS has demonstrated not only incompetence when it comes to providing intelligence that is supposed to protect the public, but has also participated in serious threats and aggressions against public safety.

The definition of “threat to national security” and the lack of a definition of terrorism allow Canadian authorities to invoke immigration security measures, in a draconian fashion, against individuals who pose no threat whatsoever (similar to the way, in a different context, these words are evoked to justify military offensives). These concepts are malleable. They allow “national security” to be invoked in a manner so as to exclude “undesirables”. The results have been devastating for the lives of those who have been targetted and their families.

The training sessions being organized by the Federal Court for judges in security certificate cases constitute a recognition by the judges themselves that they are not in a position to properly test the government’s evidence.

The use of secret evidence, especially in light of the above-mentioned conclusions, in all immigration security hearings is fundamentally unfair.

The use of *ex parte* hearings, especially in light of the above-mentioned conclusions, in all immigration security hearings is fundamentally unfair.

The special advocate model is an insufficient remedy for the use of secret evidence and *ex parte* hearings.

The alleged need to protect national security provides no justification for affording second-class justice to non-citizens.

### For popular action:

- Create a popular watchdog to monitor security and intelligence agencies (CSIS and RCMP), in order to provide the recourse and accountability that SIRC has failed to provide.
- Build solidarity between different groups targetted in the name of national security – including immigrants and refugees, indigenous people and the labour movement – through public education events, mutual aid projects and joint campaigns.



- Expand the campaign to abolish security certificates to demand the abolition of all secret evidence and secret hearings in the *Immigration and Refugee Protection Act*.
- Improve links between the campaign to abolish security certificates and campaigns against the *Anti-Terrorism Act*.
- Create a campaign to have CSIS placed on the list of terrorist organizations, and to have its assets sold to pay reparations to people who have suffered at its hands.
- Initiate popular education campaigns aimed at breaking the silence, secrecy, stigmatization, isolation and fear in targetted communities.
- Build community support to deal collectively with the concrete impacts of the immigration security regime on people's lives (e.g. job loss, etc.)

#### For governments:

- Don't use immigration law to deal with security concerns.
- Strike the word 'terrorism' from the Criminal Code. All acts that could be construed as "terrorism" (mass murder, aiding and abetting murder, conspiracy to murder, kidnapping, etc.) are already defined and prohibited under the Criminal Code.
- Repeal the *Anti-Terrorism Act*.
- Explicitly recognize the equality of all people within Canada regardless of their status. Overhaul the entire spectrum of immigration law, regulations, and policy (including all discretionary powers) so that it is consistent with principles of equality, liberty, dignity and justice. Specifically, ensure that all in Canada are afforded due process, including a fair and open trial.
- Abolish all security measures based on the premise of racial profiling and surveillance of targetted communities, such as the "no fly list".
- Abolish security certificates and all uses of secret evidence and *ex parte* hearings in immigration matters. Repeal sections 34 and 77-86 of the *Immigration and Refugee Protection Act*.
- Implement complete transparency in the application and operation of immigration law.
- Provide reparation to individuals and families who have been victims of immigration security measures – within or outside Canada – and to those whose immigration status has been suspended for unreasonable lengths of time.
- Identify and provide effective recourse for systemic racism and racial profiling in all law enforcement and intelligence-gathering agencies.
- Cease information-sharing with other intelligence and security agencies where there is any risk of contamination of torture or any risk of endangering individuals in Canada or their families abroad.

#### Detention

Immigrants are being subjected to arbitrary and indefinite detention in the name of national security. Not only is this illegal, it constitutes injury of the most severe form, amounting to psychological torture.

Building and operating a new detention centre specifically for immigration security detainees is a waste of public funds, a wrong-headed investment in a discriminatory

policy, which has done nothing to address either the short-term demands of the security certificate detainees for better detention conditions or the fundamental injustices. The new detention centre, like the US-run prison at Guantanamo Bay in Cuba, has become a symbol of injustice against racialized communities, and particularly against Arabs, Muslims and those perceived to be Arab and Muslim.

Without a fair and open trial, “control orders”, while representing a significant improvement in conditions for the detainee, remain an unjustifiable and humiliating restriction of liberty. It is of broad concern that individuals are being subjected to such intense control and surveillance.

Immigration security measures have had a devastating impact on family members. Entirely unwarranted infringements of their liberty have been imposed, thereby forcing impossible choices on them. The impact on family members is largely ignored in the public debate over such measures.

For popular action:

- Strengthen the popular campaign to close the illegal Guantanamo North prison, as the physical symbol of policies of arbitrary and indefinite detention.
- Develop grassroots solidarity with people in immigration detention; including letter-writing campaigns, visits, radio broadcasts, support work and solidarity rallies at detention centres.
- Develop popular education tools that can be distributed to people in immigration detention as well as to their friends and family, explaining their rights and possible recourses and action.
- Develop community support for families of immigration security detainees
- Mount a campaign to challenge control orders, house arrest, and release conditions imposed without trial on immigrants.

For governments:

- Close “Guantanamo North”, the Kingston Immigration Holding Centre.
- Release immigration security detainees without delay and without conditions – or charge and provide them with a fair and open trial.
- Remove the conditions of release and constant, intrusive surveillance of those who have been freed under bail – or charge and provide them with a fair and open trial.
- Ensure that all judicial and procedural guarantees that safeguard the liberty of Canadians are applied without discrimination to non-citizens.
- After a fair and open trial, make use of alternatives the least restrictive of liberty, such as regular reporting to officials. before relying on more invasive conditions or detention.
- Ensure that there is no mandatory detention and that there is a legally mandated maximum length to any detention imposed after a fair and open trial to guarantee that no one is subject to de facto indefinite detention.
- Ensure that those detained have frequent and regular access to a judicial review of their detention in accordance with international standards and Canadian legal norms applied to citizens, including access to all evidence on which their detention is based, the right to cross-examine witnesses, and the right to be present at all meetings between the judges

and the ministers.

- In all cases, ensure that conditions of detention respect the dignity of detainees, on material, cultural and religious levels. In particular, Canada should immediately cease using physical restraints and strip-searches for people detained under immigration laws and ensure that detainees understand the process that is being imposed on them and are kept updated.
- Ensure that any conditions of release, imposed after a fair and open trial, minimise the deprivation of liberty, and that they take into account the private life and the mental and physical health of the person and of their family.
- Prohibit the detention of children. No child should ever be detained.

## Deportation

The threat of deportation casts a pall of uncertainty over many individuals, their families and communities, condemning them to insecurity and alienation from the rest of society.

When it is combined with an acknowledged threat of torture – as is the case of people threatened with deportation on the grounds of “national security” – this threat becomes a form of psychological torture. It is deplorable that Canada has an explicit policy that in “exceptional circumstances” it can deport people to face torture, that it is actively pursuing this policy in several current cases, and that it otherwise resorts to hypocritical tricks like “diplomatic assurances” to evade international and domestic norms against return to torture. The Commission fails to see a difference between a legalized process of deportation to torture and an extra-legal programme of extraordinary rendition”.

Keeping people under an active threat of being sent to a recognized risk of torture, as Canada is doing in several cases, is horrifying. Doing so in the name of security is inconsistent and counter-productive to the point of being perverse.

Given the fact that Canada has not respected international law, and has ignored repeated reminders from UN and human rights organisations, and that the impact is so extreme and irreversible, strong popular action is particularly necessary in this area.

### For popular action:

- Develop a sustained and proactive media campaign on the issue of deportations, and legally sanctioned deportations to torture which would be endorsed by all sectors of society working for social justice.
- Organise popular actions to raise the issue of Canadian deportation to torture at all UN and other international meetings in Canada in collaboration with all sectors of society working for social justice.
- In cooperation with popular movements in other parts of the world, encourage popular actions across the globe to draw attention to and denounce Canadian deportations to torture.
- Develop effective and broad-based popular education about human rights violations

related to deportation.

- Strengthen the sanctuary movement and safe passage through borderlands.
- Research the role of airline companies and other agencies in facilitating deportation in order to develop effective means to end this collaboration.
- Develop effective actions to prevent deportations at airports and other points of departure.

For government:

- Uphold the established international standard of an absolute prohibition on torture. This means, minimally, ending the policy of “exceptional circumstances”, revising IRPA to clearly reflect the absolute prohibition on returns to torture, and ending all cooperation in “extraordinary rendition” programmes. Canada must stop sub-contracting torture immediately.
- Cease using deportation as a security measure.
- Cease seeking and accepting diplomatic assurances to circumvent international obligations to protect people at risk.
- Stop sharing information during the immigration process in ways which create a risk for people threatened with deportation.
- Initiate a comprehensive and serious review of all Canadian involvement in sub-contracting torture overseas, through legalized or extra-legal means, holding Canadian security agencies, including RCMP and CSIS, accountable for their involvement.

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